RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON MR TOKOTA SC MS HEMRAJ SC

HELD ON

DAY 242 10 JUNE 2014 PAGES 30442 TO 30618



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	Page 30442		Page 30444
1	[PROCEEDINGS ON 10 JUNE 2014]	1	MS PILLAY: Chair, it's ZZZ.
2	[09:33] CHAIRPERSON: The Commission resumes. We	2	CHAIRPERSON: ZZZ. Ms Hemraj was right
3	were requested this morning by the representatives of the	3	and I was wrong. You've got - she says somewhat modestly
4	South African Police Service to grant them extra time	4	and inaccurately, she's always right. What exhibits do you
5	before starting because they only at a late stage received	5	wish to hand in?
6	notice of documents which are going to be relied on in	6	MS BALOYI: Chair, the first document is
7	cross-examination and I understand that since then they	7	the CV, it's the CV of Kaizer Modiba.
8	have, after 9 o'clock this morning they received four other	8	CHAIRPERSON: Yes.
9	documents which are going to be relied on by the families	9	MS BALOYI: ZZZ1, Chair.
10	in cross-examination. This is not a satisfactory way of	10	CHAIRPERSON: Yes.
11	proceeding. It means that they will require extra time at	11	MS BALOYI: And the second document is an
12	some stage before cross-examination begins. I hope they	12	IPID statement which is dated the 23rd August 2012.
13	can deal with it during the first break but if not,	13	CHAIRPERSON: ZZZ2?
14	obviously I have to give them that time and this is totally	14	MS BALOYI: ZZZ2, Chair. Chair, the
15	unacceptable and in future if this sort of thing happens I	15	first document is a – it's the same as the IPID statement
16	won't allow cross-examination to take place on documents	16	but it has a different date and it's not clear why it was
17	that are produced in a late fashion like that. And also,	17	typed again but we thought let's put it before the
18	of course, not only is it necessary for the Police Service	18	Commission.
19	to read the documents, it's necessary for us to read them	19	CHAIRPERSON: Sorry, is the first one
20	as well so that we can perform our duties properly. I	20	typed, is the second one typed and the first one
21	trust that it'll be unnecessary for me ever to have to deal	21	manuscript?
22	with a topic of this kind again. Ms Baloyi, are you going	22	MS BALOYI: Chairperson, what you have
23	to call the witness?	23	with the first IPID statement is you've got it under cover
24	MS BALOYI: Indeed, Chair, thank you.	24	of an IPID documents with other notes, handwritten notes
25	Chair, the next witness for the SAPS is Colonel Kaizer Tlou	25	and then you've got the typed statement in there so we
	Page 30443		Page 30445
1	Modiba.	1	present that as a composite document, ZZZ2.
2	CHAIRPERSON: Colonel, would you please	2	CHAIRPERSON: Sorry, is ZZZ2 then items 2
3	stand? Are you prepared to take the oath or do you wish to	3	and 3 on your list or –
4	affirm?	4	MS BALOYI: Yes.
5	COLONEL MODIBA: Take the oath.	5	CHAIRPERSON: Alright. Well, alright,
6	CHAIRPERSON: You'll take the oath.	6	okay. Let's make it ZZZ2.1 being the statement dated 23
7	COLONEL MODIBA: That's correct.	7	August and ZZZ2.2 being the one dated, which you say is
8	CHAIRPERSON: Do you swear that the	8	virtually the same -
9	evidence you will give before this Commission will be the	9	MS BALOYI: That's in order, Chair.
10	truth, the whole truth and nothing but the truth. Would	10	CHAIRPERSON: - 25th of August. Then you
11	you please raise your right hand and say, I swear, so help	11	have a statement of the 12th November 2012.
12	me God.	12	MS BALOYI: Yes, Chair.
13	COLONEL MODIBA: So help me God.	13	CHAIRPERSON: Is that ZZZ3?
14	CHAIRPERSON: I swear, so help me God.	14	MS BALOYI: That is ZZZ3, Chair.
15	COLONEL MODIBA: I swear, so help me God.	15	CHAIRPERSON: Then you've got a further
16	KAIZER TLOU MODIBA: (d.s.s.)	16	statement which we already have in -
17	CHAIRPERSON: Thank you, you may be	17	MS BALOYI: As MMM23.
18	seated. Ms Baloyi?	18	CHAIRPERSON: As MMM23.
19	EXAMINATION BY MS BALOYI: Thank you,	19	MS BALOYI: Yes, Chair.
20	Chair. Chair, perhaps the first thing to start with is the	20	CHAIRPERSON: And then we have another
21	housekeeping issues. We have a number of new documents	21	statement –
22	which are -	22	MS BALOYI: Yes, Chair.
23	CHAIRPERSON: Yes, sorry – [microphone	23	CHAIRPERSON: - of the 19th of December
	off, inaudible] - something before you carry on. Ms	24	2013.
24	on, inducible] something before you carry on. Wis	27	2010.
	Pillay, what is the next letter series for -	25	MS BALOYI: Yes, Chair.

	Page 30446		Page 30448
1	CHAIRPERSON: Is that ZZZ4?	1	Chairperson.
2	MS BALOYI: That is ZZZ4, Chair.	2	MS BALOYI: And then in 1990 what did you
3	CHAIRPERSON: And then the others, other	3	do?
4	items in your bundle –	4	COLONEL MODIBA: 1990 I went to work in
5	MS BALOYI: Are already exhibits.	5	the crime prevention unit in plainclothes, like undercover,
6	CHAIRPERSON: - are previous exhibits.	6	some sort of that.
7	MS BALOYI: Indeed, Chair.	7	MS BALOYI: And for how long were you
8	CHAIRPERSON: Very well, please proceed.	8	there?
9	MS BALOYI: Thank you, Chair. Colonel	9	COLONEL MODIBA: I worked there until
10	Modiba, if we could start with ZZZ1 which is your CV, now	10	1993.
11	you will see in the first page of that document under	11	MS BALOYI: Yes and on this page here we
12	competencies and attributes it says you have 27 years'	12	see that, on page 3 we see that in December, from December
13	experience in law enforce, do you see that?	13	1993 to December 1998 you say you were in visible policing.
14 15	COLONEL MODIBA: That's correct,	14 15	COLONEL MODIBA: That's correct, that's
15	Chairperson. MS BALOYI: Yes. Now if you turn to the	15	when I moved to SAPS Soshanguve and there I was attached to
16 17	5	16 17	visible policing. MS BALOYI: Okay. Well, the rest of it
17	third page, to page 3 of that document and you, the second heading "Previous employment" which is in bold, it says	17	is set out in the CV. When did you join, for completeness,
10	under period, the first period there is December 1998 to	10	when did you join the NIU?
20	January 2002, you see that?	20	COLONEL MODIBA: Chairperson, it was in
20	COLONEL MODIBA: That's correct,	20	2003.
22	Chairperson.	22	MS BALOYI: And you remain in the NIU
23	MS BALOYI: And then if you go down still	23	today?
24	under that same heading you have another period which is	24	COLONEL MODIBA: That's correct,
25	December 1993 to December 1998, do you see that?	25	Chairperson.
	Page 30447		Page 30449
1	COLONEL MODIBA: Yes, I can see,	1	MS BALOYI: Now the statement, you've
2		n	denegad to guite a number of statements and perhaps if we
2	Chairperson.	2	deposed to quite a number of statements and perhaps if we
3	MS BALOYI: Yes. Now according to this	3	could work from the statement that we have marked exhibit
4	MS BALOYI: Yes. Now according to this it doesn't add up to the 27 years of experience that you	3 4	could work from the statement that we have marked exhibit ZZZ4.
4 5	MS BALOYI: Yes. Now according to this it doesn't add up to the 27 years of experience that you have in law enforcement. Can we just talk about that?	3 4 5	could work from the statement that we have marked exhibit ZZZ4. COLONEL MODIBA: Can I get the date?
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	Page 30450		Page 30452
1	interviewing me about the events that were in relation to	1	paragraph you tell us that on the 15th you report, in fact
2	Marikana events.	2	in that first paragraph you tell us about your posting, I
3	MS BALOYI: Yes. Chairperson, perhaps I	3	will not go into that. In the next paragraph you tell us
4	can put this on record just so that we save time instead of	4	that on the 15th you reported again to the JOC and you had
5	me taking the witness through this. This document was	5	the same posting as the previous day, is that correct?
6	prepared by Mr Wesley following an interview and then was	6	COLONEL MODIBA: That's correct,
7	presented to the witness to look at and confirm the	7	Chairperson.
8	contents, that he's happy, and then it would have been	8	MS BALOYI: In paragraph 3 you say, "I
9	converted into a statement. It seems within the SAPS there	9	was in charge of one group. Lieutenant-Colonel Nkebe was
10	was misunderstanding and the witness signed this document	10	in charge of another group in the Karee Mine area and I
11	prepared by Mr Wesley as if it's a statement and we decided	11	think that a Captain Ntoyi from Durban may have been in
12	that we would work on the basis of the document. Now -	12	charge of the third group with Lieutenant Nzela as his
13	CHAIRPERSON: Who is Mattheus? Is that	13	junior." These people that you refer to as in charge, are
14	Mr Wesley's code name?	14	these NIU members?
15	MR WESLEY: No Chair, that's Mr Mojapelo.	15	COLONEL MODIBA: Ja, I'm referring to the
16	He's actually Mattheus Mojapelo but we call him Matthews.	16	commanders that were working directly with me on the
17	CHAIRPERSON: Yes, yes – no, I suspect as	17	ground.
18	much but you've been given the credit for the statement,	18	MS BALOYI: Yes and these are NIU
19	it's actually Mr Mojapelo's credit for the statement, is	19	commanders? I'm confirming that with you.
20	that right?	20	COLONEL MODIBA: They are NIU commanders,
21	MR WESLEY: The notes which are there are	21	correct.
22	in fact my notes, if I'm not mistaken, but what happened,	22	CHAIRPERSON: And the members of the
23	they were notes that were forwarded together with the	23	three groups referred to, the one you were in charge of,
24	statement and instead the statement being signed, the notes	24	the one Lieutenant-Colonel Nkebe was in charge of and the
25	were signed as a statement.	25	one that the officer you think was Captain Ntoyi was in
1	Page 30451	1	Page 30453
1	CHAIRPERSON: Okay.	1	charge of, were they all NIU groups, groups of NIU members?
2	CHAIRPERSON: Okay. MS BALOYI: Thank you, Chair. Now	2	charge of, were they all NIU groups, groups of NIU members? COLONEL MODIBA: That's correct,
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	Page 30454		Page 30456
1	person will have to leave the chamber. Proceed.	1	MS BALOYI: Now if you would look at
2	COLONEL MODIBA: Thank you, Chairperson.	2	exhibit L slide 148? Now on this slide, where you say that
3	The developments I'm referring to was soon after General	3	"I was no longer posted to key point but to the northern
4	Annandale briefed us in the JOC about the striking miners	4	side of the koppie where the negotiations were taking place
5	who were going to have a night vigil at koppie 1 whereby	5	with the miners, the usual place where the miners
6	they were, they promised to lay, to leave their arms there	6	gathered," can you point out on this slide where it is that
7	and he further asked to say the group that was coming to	7	you say you were posted on the 16th?
8	work n the night need to be informed about such	8	COLONEL MODIBA: I don't have a pointer
9	developments so that they don't disturb that process of	9	with me, I don't know if I can be offered one. On this
10	night vigil.	10	date, the 16th in the morning I was posted at northern side
11	MS BALOYI: Now further in that paragraph	11	of koppie 1. However –
12	you tell us that you had a hand-held radio on this day. Do	12	CHAIRPERSON: What you indicate on the
13	you see that, and that you didn't have any serious problems	13	screen is the area in a green rectangle marked immediate
14	with it?	14	response area 2.
15	COLONEL MODIBA: Which line, Chairperson?	15	COLONEL MODIBA: That's correct,
16	MS BALOYI: Well, perhaps let me ask you	16	Chairperson. However, I came here with my team next to
17	– did you have a radio on that day?	17	substation, that I realised later that I was not at the
18	COLONEL MODIBA: Yes, I was issued with a	18	actual spot.
19	radio.	19	[09:53] CHAIRPERSON: What you indicated was a
20	MS BALOYI: Okay and was it working	20	spot, as one looks at the photograph, on the left-hand side
21	properly?	21	of the top portion of the power station which is depicted
22	COLONEL MODIBA: No, the radio was not	22	on the screen. In other words the, at the bottom left
23	working properly. We always had problems with the	23	corner of the photograph we have another green rectangle
24 25	communication.	24 25	marked "Immediate response area 1." Above that are three
20	MS BALOYI: Yes. And then you say at the	20	essentially rectangular shapes which are, I understand, the
	Page 30455		Page 30457
1	Page 30455 end of the day you were then told to report the next day at	1	Page 30457 power station, or one of the power stations at the mine,
1 2	5	1 2	5
	end of the day you were then told to report the next day at		power station, or one of the power stations at the mine,
2	end of the day you were then told to report the next day at 6H00, you see that right at the end of that paragraph?	2	power station, or one of the power stations at the mine, and the point you've shown us is to the left of the top
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1	Page 30458 you reached the far end of immediate response area 1. You	1	Page 30460 heard on radio that there was a group of women in Nkaneng.
2	then turned right, there's a path or road indicated there,	2	Now if we move to paragraph 7, you say, "Then I received a
3	went up that road and then went around on the left-hand	3	call just in the afternoon to say all commanders must go
4	side of the three rectangles to which I referred earlier,	4	and meet at forward holding area 1 at 2:30 to get further
5	which is part of the power station. Is that correct?	5	briefing." Who gave you this call?
		6	
6 7		7	COLONEL MODIBA: It was Colonel Gaffley. As I mentioned earlier, Chairperson, that there was a huge
8	Chairperson. MS BALOYI: And you remained there until	8	communication problem. I could hear that he was trying to
9	when?	9	relay a message, but he couldn't get through, then he
10	COLONEL MODIBA: I remained there from 9	10	resorted to use a cell phone where he informed me about the
11	o'clock until just before half past 2, 14:30, at just	11	planned briefing at 14:30 at forward holding area 1.
12	before that time.	12	MS BALOYI: Yes, and who is Colonel
13	MS BALOYI: Yes.	13	Gaffley?
14	COLONEL MODIBA: Because we still had to	14	COLONEL MODIBA: Colonel Gaffley, then he
15	go to debriefing at 14:30 at forward holding area 1, there.	15	was at Special Task Force. Now he's with us at National
16	CHAIRPERSON: Did you leave your unit	16	Intervention.
17	there and just go back yourself either alone or with one or	17	COLONEL MODIBA: And then you say in
18	more colleagues to forward holding area 1?	18	paragraph 8, "At 14:30 I went to forward holding area as
19	COLONEL MODIBA: I left the team behind	19	one of the commanders of the NIU." You see that?
20	and I went to forward holding area 1 to receive further	20	COLONEL MODIBA: Yes, I can see it.
21	briefing, Chairperson.	21	MS BALOYI: Okay, and you mention Captain
22	MS BALOYI: And then you say that "I was	22	Cwinyane. You say you went together with Captain Cwinyane
23	not close to the" – in the same paragraph 5, you say, "I	23	and Lieutenant Ndlela of NIU. Is Captain Cwinyane also
24	was not close to negotiations, but could see this	24	NIU?
25	happening." And then you set out your purpose, still in	25	COLONEL MODIBA: That's correct,
1	Page 30459 paragraph 5 in the fifth line, you say, "Our purpose was to	1	Page 30461 Chairperson. He's one of the platoon commanders at
1	paragraph 5 in the fifth line, you say, "Our purpose was to	1	Chairperson. He's one of the platoon commanders at
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2 3	paragraph 5 in the fifth line, you say, "Our purpose was to give operational supports to the disciplines that were involved on that side of the koppie in case they were	2 3	Chairperson. He's one of the platoon commanders at National Intervention Unit. MS BALOYI: And then you say, "At the
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 30462 dispersal NIU was going to give a backup to POP and TRT in the formation of POP being in front, doing the dispersal, and TRT backing them and then National Intervention, and thereafter we were supposed to sweep koppie 1 along with Special Task Force. MS BALOYI: Now in fact in that paragraph 8, if you look at the third line from the bottom you say, the third line from the bottom you say, "Our main role as NIU was to sweep koppie 1 to retrieve firearms and dangerous weapons and make sure it was safe for everyone who was going there, STF also to do this." You see that? COLONEL MODIBA: Yes, I can see it, Chairperson. MS BALOYI: And you also say TRT were	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 30464 response area 1, and on the way there, about I would guess just under halfway there's a smaller power station according to the evidence, and just to the right of that off the road, above the road on the photographs, that's where you gathered with the members and gave them a briefing to which you'd referred. Is that correct? COLONEL MODIBA: That's correct, Chairperson. MS BALOYI: In this briefing, what did you say to members of NIU? COLONEL MODIBA: I briefed them about what I got from the briefing we received from Colonel Scott at forward holding area 1. I explained to them the way forward in that the striking miners have to be dispersed
15 16	assigned to sweep koppie 2. Is that what the briefing said?	15 16	from koppie 1 and that our role before we conduct our, we carry on with our primary role, we're going to give backup
17	COLONEL MODIBA: Yes, that is, that was	17	to POP and the TRT.
18	the role given to TRT after the initial dispersal.	18	MS BALOYI: Now if we go back to the
19	MS BALOYI: Now to get to this briefing,	19	statement, you say in that same paragraph in the second
20 21	how did you get there? Did you walk? Did you drive? COLONEL MODIBA: I drove the state-owned	20 21	line, you say, "I gave them briefing accordingly as it was said and told them from my own always to take into
21 22	vehicle that I was entrusted with.	21 22	consideration section 49." You see that?
23	MS BALOYI: And then at paragraph 9 you	23	COLONEL MODIBA: Yes, I can see it,
24	say, "At 15:00 I called all 96 NIU members together near	24	Chairperson.
25	one of the power stations so that I could give them a	25	MS BALOYI: What were you referring to
	Page 30463		Page 30465
1	briefing." You see that?		5
		1	there when you say they must take into consideration
2	COLONEL MODIBA: I can see it,	2	section 49?
2 3	COLONEL MODIBA: I can see it, Chairperson.	2 3	section 49? COLONEL MODIBA: Basically I was talking
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1			
1	Page 30466 understood what NIU role was. You see that in that	1	Page 30468 CHAIRPERSON: What I would say to you,
2	sentence?	2	that's not scene 1 as we call it, as we know it in the
3	COLONEL MODIBA: Yes, I can see it,	3	Commission, but never mind, we understand what you're
4	Chairperson.	4	meaning.
5	MS BALOYI: Was that your impression that	5	COMMISSIONER HEMRAJ: Ms Baloyi, is there
6	the members understood what it is that they were required	6	a photograph or a slide that shows that area?
7	to do?	7	MS BALOYI: Yes, Chairperson, L152 will
8	COLONEL MODIBA: Yes, Chairperson, as	8	be helpful. Now Colonel, if you look at that slide –
9	usual when you give the briefing you give members	9	MR CHASKALSON SC: Sorry, Chairperson,
10	opportunity to pose questions, if any. Any, if there are	10	I'm sorry to interrupt Ms Baloyi, but this is actually
11	any uncertainty they have to should that there are	11	before the Colonel moved in there according to his
12	uncertainty, then you clarify those uncertainties.	12	testimony, because it's a morning slide. Nyala 6 is still
13	MS BALOYI: And you were satisfied that	13	in its original position. It may be better to look at a
14	they understood?	14	slide from the afternoon, or a photograph from the
15	COLONEL MODIBA: I was satisfied because	15	afternoon where we'll be able to identify the Colonel's
16	there was no any other uncertainty that they're showing.	16	specific –
17	MS BALOYI: Okay, and then in the next	17	CHAIRPERSON: Can we see the photograph
18	sentence you then say, "We then proceeded to where scene 1 $% \left({{{\mathbf{x}}_{i}}} \right) = {{\mathbf{x}}_{i}} \left({{\mathbf{x}}_{i}} \right)$	18	he's referred to? In his statement he says IMG P4540 shows
19	where everything started to check the area," and then you	19	the NIU member in line in the middle. Now is that the area
20	say image, "IMG P4540 shows the NIU member in line in	20	that you're talking about, or is it another area before you
21	middle and my blue bakkie." We want to look at that image,	21	got to the area which is shown in that particular
22	but if we could go back to L148, when you say "We then	22	photograph, IMG P4540?
23	proceeded to where scene 1 where everything started to	23	COLONEL MODIBA: That's the vehicle I
24	check the area," what are you referring to? Where did you	24	drove on the day, Chairperson, that spot where the vehicle
25	go?	25	was parked.
	Page 30467		Page 30469
1	COLONEL MODIBA: We drove to where most	1	MR CHASKALSON SC: And that would be
2	of the police vehicles and the media vehicles were parked.	2	JJJ10.4540.
3	They were somewhere here.	3	CHAIRPERSON: Thank you, Mr Chaskalson.
4	CHAIRPERSON: That's not scene 1 as we	4	MS BALOYI: Thank you, Mr Chaskalson.
5	know it in the Commission, but never mind, we know what you	5	CHAIRPERSON: Are you able now on this
6	mean. If one looks at this photograph, at this slide, one	6	photograph, which is JJJ10.4540, to show us where your
7	sees round about the middle of the picture above that	7	vehicle was?
8	smaller power station that I referred to there's a path	8	COLONEL MODIBA: It could be somewhere
9	going up there to what would be the bottom left-hand corner	9	there in that area, here.
10			
	of the area marked "greater squatter camp" and you indicate	10	[10:13] CHAIRPERSON: Yes, as one looks at the
11	just below that, slightly to the left is the place where	11	[10:13] CHAIRPERSON: Yes, as one looks at the photograph there is, more or less in line with the kraal
11 12	just below that, slightly to the left is the place where you and your members went. Is that correct?	11 12	[10:13] CHAIRPERSON: Yes, as one looks at the photograph there is, more or less in line with the kraal but to the left there's a whole line of vehicles and which,
11 12 13	just below that, slightly to the left is the place where you and your members went. Is that correct? COLONEL MODIBA: Ja, that's where the	11 12 13	[10:13] CHAIRPERSON: Yes, as one looks at the photograph there is, more or less in line with the kraal but to the left there's a whole line of vehicles and which, and about the eighth one from the left-hand side, below it
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11 12 13 14 15	just below that, slightly to the left is the place where you and your members went. Is that correct? COLONEL MODIBA: Ja, that's where the vehicles were parked, just in that area there. CHAIRPERSON: Is that where the media	11 12 13 14 15	[10:13] CHAIRPERSON: Yes, as one looks at the photograph there is, more or less in line with the kraal but to the left there's a whole line of vehicles and which, and about the eighth one from the left-hand side, below it are two other vehicles. That's more or less where you indicate, is that correct?
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1	Page 30470	1	Page 30472
1	said earlier on, media vehicles was there, TRT vehicles	1	there's a longer line, I would guess it to be 30 – I
2	were there as well, there were a lot of vehicles there	2	haven't counted them – at least 30 people which one can see
3	including NIU and other disciplines.	3	there. Do you see what I'm referring to?
4	COMMISSIONER HEMRAJ: So you won't be	4	COLONEL MODIBA: I can see, Chairperson.
5	able to differentiate your vehicle from the others on this	5	CHAIRPERSON: It's suggested to us that
6	slide?	6	if you want to look to see things clearly yourself you can
7	COLONEL MODIBA: No, I won't be able but	7	look at the screen on your left-hand side. If you want to
8	the fact is all the police vehicles, most of the police	8	point out, please point out on the middle screen, the one
9	vehicles were parked there.	9	behind me, so that everyone can see - but you see what I've
10	COMMISSIONER HEMRAJ: Yes, thank you.	10	referred you to?
11	CHAIRPERSON: And among them were the	11	COLONEL MODIBA: Ja, I assume Chairperson
12	vehicles in which the members or your unit had been	12	is referring me to that line.
13	conveyed there, is that right? Am I right? Among those	13	CHAIRPERSON: You're correct, yes. Now I
14	vehicles that you talked about are the vehicles in which	14	think what Ms Baloyi wants to know is –
15	your members were conveyed to that spot?	15	COMMISSIONER HEMRAJ: You've got a
16	COLONEL MODIBA: That's correct,	16	pointer –
17	Chairperson.	17	CHAIRPERSON: You've got a pointer, she's
18	MS BALOYI: Colonel, on that slide if you	18	got a pointer now, alright so now we've got a far more
19	look from the bottom of that, that combination of vehicles,	19	effective way of presenting the evidence.
20	you have two vehicles right at the bottom, do you see that	20	MS BALOYI: Thank you, Chair. Colonel,
20	in the middle of the slide? Can you see that? There's two	20	that line there, you see that?
22	vehicles right at the bottom in the middle.	22	COLONEL MODIBA: Yes, I can see,
22	COLONEL MODIBA: Yes, I can see,	22	Chairperson.
23 24		23 24	CHAIRPERSON: That's the longer line, I
24 25	Chairperson. MS BALOYI: Now if you move in a straight	24 25	-
25	NOS DALOTT. NOW IL YOU HOVE IT a straight	25	suggested at least 30 people in a line.
	Page 30471		Page 30473
1	Page 30471 line from those two vehicles, somewhere in the middle there	1	Page 30473 MS BALOYI: Yes.
1 2		1 2	0
	line from those two vehicles, somewhere in the middle there are two white vehicles on the extreme and in the middle		MS BALOYI: Yes. CHAIRPERSON: Running parallel to the
2	line from those two vehicles, somewhere in the middle there are two white vehicles on the extreme and in the middle there looks like there are people there, can you see where	2	MS BALOYI: Yes. CHAIRPERSON: Running parallel to the bottom of the photograph.
2 3 4	line from those two vehicles, somewhere in the middle there are two white vehicles on the extreme and in the middle there looks like there are people there, can you see where I'm pointing out a line of people?	2 3	MS BALOYI: Yes. CHAIRPERSON: Running parallel to the bottom of the photograph. MS BALOYI: It is, Chair, thank you. And
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	Page 30474		Page 30476
1	MS BALOYI: Yes. And then you say – and	1	just to go and see if they have already formed up so that
2	is that where you positioned after you arrived in that	2	if the other disciplines had formed up I could just go back
3	area?	3	and inform my members to come and line up behind those two
4	COLONEL MODIBA: Yes, that's where we	4	lines.
5	stopped and I kept them there so that I could go forward	5	MS BALOYI: And then you say, "As I was
6	and check the setup of the initial formations that were	6	moving around there was barbed wire being deployed which I
7	allotted to us.	7	watched because I'd never seen this before. We were inside
8	MS BALOYI: In fact you say, "At scene 1,	8	the barbed wire." Do you see that?
9	I left the group at the back" –	9	COLONEL MODIBA: Yes, I can see.
10	CHAIRPERSON: [Microphone off, inaudible]	10	CHAIRPERSON: I think it needs a bit of
11	- interpose by saying at scene 1 you don't mean what we	11	clarity on that. Can you see in this photograph towards
12	refer to as scene 1, you mean the scene as depicted on this	12	the top of the photograph, can you see there's a path going
13	photograph, is that right?	13	across from left to right and you can see in the far corner
14	COLONEL MODIBA: That's correct,	14	the power station and there are a number of vehicles there
15	Chairperson.	15	with wire trailers behind them and you see the first one
16	MS BALOYI: And then you say, "I left the	16	has moved in from the left. Do you see the first one?
17	group at the back and went forward to check." You see	17	That's quite close to the second one, do you see that?
18	that? Won't you indicate with the help of a pointer, when	18	COLONEL MODIBA: Yes, I can –
19	you say you moved forward, you left the group and you moved	19	CHAIRPERSON: According to the evidence
20	forward, where did you move to?	20	we've heard this photograph was taken at a time when the
21 22	COLONEL MODIBA: From there I moved to that direction.	21 22	first Nyala, the first trailer-drawing Nyala which had started out from near the power station had arrived almost
22	MS BALOYI: From the line of NIU members.	22	at the point where the second Nyala was waiting and then
23 24	COLONEL MODIBA: That's correct,	23 24	you see as you move to the left, to the right, you see the
24 25	Chairperson.	24 25	third Nyala with the trailer and the fourth one and then
23		25	third wyala with the trailer and the fourth one and them
	Page 30475		Page 30477
1	MS BALOYI: Yes when you say in that	1	later the fifth one. Do you see that?
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	Page 30478		Page 30480
1	and the koppie or were you below the barbed wire as we see	1	CHAIRPERSON: They were racing each
2	it on the photograph?	2	other, as far as I can make out, to the kraal. Is that so?
3	COLONEL MODIBA: We're below the barbed	3	A race between the Nyala and the crowd.
4	wire, Chairperson.	4	COLONEL MODIBA: Yes.
5	MS BALOYI: And then you say that the	5	CHAIRPERSON: Who won?
6	barbed wire was connected to some kraal, you see that?	6	COLONEL MODIBA: They were running,
7	COLONEL MODIBA: Yes, Chair.	7	walking fast.
8	MS BALOYI: The very last sentence. Did	8	COMMISSIONER HEMRAJ: Can I just ask you,
9	you see that barbed wire deploying? Did you see that Nyala	9	when you first arrived at the scene did you immediately see
10	deploying barbed wire to the kraal?	10	that group of persons next to the Nyala or had you seen
11	COLONEL MODIBA: Yes, I saw it	11	them prior to that?
12	Chairperson.	12	COLONEL MODIBA: It was a few minutes
13	CHAIRPERSON: The kraal you're referring	13	later after I arrived at that scene because there were a
14	to, is that the one we see on the right-hand side of the	14	lot of movements there. My impression was, at the time
15	photograph?	15	when, before that crowd ran towards the kraal I was under
16	COLONEL MODIBA: Ja, that's the -	16	the impression that the negotiating team was still in a
17	MS BALOYI: Point –	17	process of talking to the striking miners. Then when I saw
18	CHAIRPERSON: It doesn't help to show on	18	the group, the Nyala was deploying the barbed wire, it came
19	the screen to your left, you've got to show on the screen	19	to my impression that maybe the negotiation did not
20	above my, above me, my head in the middle of the chamber so	20	actually succeed.
21	everybody can see it.	21	MS BALOYI: Colonel, before you saw this
22	COLONEL MODIBA: That's the kraal, that's	22	Nyala that you are describing with the strikers, had you
23	the kraal I am referring to.	23	seen any of the Nyalas before it deploying barbed wire?
24	CHAIRPERSON: You are showing the kraal	24	Did you observe that?
25	that we talked about as the small kraal or the kraal which	25	COLONEL MODIBA: I think there was one
1	Page 30479	1	Page 30481
1	is the one on the right-hand side of the photograph more or	1	Nyala that moved forward to the last Nyala. That's the one
2	is the one on the right-hand side of the photograph more or less halfway up the page. Yes, Ms Baloyi?	2	Nyala that moved forward to the last Nyala. That's the one I was referring, that it was the first time to see the
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	Page 30482		Page 30484
1	CHAIRPERSON: That's what we call Nyala	1	MS BALOYI: Chair, Nyala 4, I think what
2	number 3 and then as one moves again to the right one sees	2	the witness is describing is he saw Nyala 4 which is to -
3	another Nyala with a wire trailer behind it, that's what we	3	from where I'm looking it's to the left of what I think
4	call Nyala number 4. And now can you perhaps show us, it	4	we've described as the mast.
5	sounds from what you tell us - well, I won't tell you which	5	CHAIRPERSON: Yes, that's correct.
6	Nyala was the one I think you saw, that would put a leading	6	MS BALOYI: Yes, I think that's Nyala 4.
7	question to you but can you show us on the slide where you	7	CHAIRPERSON: He depicts an Nyala moving
8	saw the Nyala you talked about which was approaching, what	8	in that direction towards the mast, can you see the mast
9	you call the last Nyala? Can you show us on the screen	9	there or should I show it to you?
10	where that is?	10	COLONEL MODIBA: No, Chairperson.
11	COLONEL MODIBA: During that deployment	11	MS BALOYI: The mast is –
12	there was a Nyala running in that direction where it joined	12	CHAIRPERSON: I'm tall enough to show you
13	with the last Nyala which deployed the barbed wire towards	13	the mast if necessary that Ms Baloyi showed you. Do you
14	the kraal.	14	see the mast?
15	CHAIRPERSON: Are you able to describe	15	COLONEL MODIBA: Yes I can see it,
16	that for us, Ms Baloyi?	16	Chairperson.
17	MS BALOYI: Chairperson, I will try.	17	CHAIRPERSON: All right, so what Ms
18	Perhaps if I could start by saying, Colonel, if you look,	18	Baloyi described was that you showed the Nyala to the left
19	the top line of vehicles there right at the top, those are	19	of it, left of the mast going to the mast. Does it go
20	the barbed wire Nyalas and the Chair has pointed you to the	20	beyond the mast as far as you could see, in other words to
21	first one which is very close to Nyala number 2, do you see	21	the right of the mast? Do you see the mast? Now the
22	that?	22	question is the Nyala that you saw coming from the left if
23	COLONEL MODIBA: Is it that one?	23	one looks at the photograph did that Nyala pass the mast or
24	MS BALOYI: Yes, those are the barbed	24	get up to the mast? Can you describe the position as you
25	wire Nyalas and then after that we've got what we all Nyala	25	saw it in relation to the mast?
20		20	
	Page 30483		Page 30485
1	Page 30483 number 3, you see that just next to the tree or bush?	1	Page 30485 COLONEL MODIBA: The movement of the
1 2	6	1 2	-
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2	number 3, you see that just next to the tree or bush? COLONEL MODIBA: Are we – this one there?	2	COLONEL MODIBA: The movement of the Nyala that was passing it was running somewhere there. It
2 3	number 3, you see that just next to the tree or bush? COLONEL MODIBA: Are we – this one there? MS BALOYI: Yes, yes. Now that – and if	2 3	COLONEL MODIBA: The movement of the Nyala that was passing it was running somewhere there. It was going to that direction.
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	Page 30486	1	Page 30488
1	EXAMINATION BY MS BALOYI (CONTD.): Thank	1	third line, paragraph 11 you say, "There was a lot of noise
2	you, Chair. Colonel, when we took the break we were	2	at that moment. I ran to the Nyala and went through. We
3	looking at that slide and you were trying to point out the	3	formed up a formation basic line facing mountain. IMG
4 5	Nyala that you saw deploying to what you describe as the last Nyala. Can I ask you to do that again? Which is the	4 5	P4543 shows this. Our tactical line is seen by the barbed wire."
6	Nyala that you said you saw deploying?	6	Now if you look at this slide, and I'm going to
7	COLONEL MODIBA: Yes, Chairperson, I	0 7	point out that you've got a line of barbed wires where I'm
8	realise that I pointed at the wrong Nyala, which I said it	, 8	pointing with this pointer, you see that? There's a line
9	was heading towards the kraal. The Nyala that I mean was	9	of barbed wire there. There's a barbed wire Nyala rather.
10	this one that was pulling the barbed wire –	10	COLONEL MODIBA: Yes.
11	MS BALOYI: Yes.	11	MS BALOYI: You see that?
12	COLONEL MODIBA: - towards this one.	12	COLONEL MODIBA: Yes, I can see it.
13	CHAIRPERSON: What you now pointed to was	13	MS BALOYI: Just in front of that you
14	the third Nyala and you indicated with the pointer that it	14	have what looks like what is a long line of, at that line.
15	moved along the line from left to right in the direction of	15	Is that what you are describing in what I've just read now?
16	the next Nyala, which is Nyala 4 on the screen.	16	COLONEL MODIBA: That line is supposed to
17	MS BALOYI: Thank you, Chair.	17	be members of National Intervention. That is the basic
18	COLONEL MODIBA: Ja, that is the Nyala,	18	line –
19	Nyala 4 on the screen.	19	MS BALOYI: Yes.
20	MS BALOYI: And that's the Nyala you	20	COLONEL MODIBA: - that we formed up
21	describe as the last Nyala?	21	after we went through between the trailer and that Nyala
22	COLONEL MODIBA: That's correct,	22	there.
23	Chairperson.	23	CHAIRPERSON: Sorry, you say you went
24	MS BALOYI: Now you then go on, and in	24	through between the trailer and the line. Now where did
25	the interest of time I will not take you through every line	25	you go? As one looks at this slide you can see three
	D 00/07		
	Page 30487		Page 30489
1	in the sentence, in the paragraph rather. You then talk	1	kraals and the one, the smallest one, the one furthest to
2	in the sentence, in the paragraph rather. You then talk about that, you say the group was chasing the Nyala to the	2	kraals and the one, the smallest one, the one furthest to the right of the three, I think that's the kraal we're
	in the sentence, in the paragraph rather. You then talk about that, you say the group was chasing the Nyala to the kraal and then you saw water cannon spraying and heard		kraals and the one, the smallest one, the one furthest to the right of the three, I think that's the kraal we're talking about, isn't it? And can you show us where you
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17 the picture close to the mast. Colonel, there's the mast 17 COLONEL MODIBA: As our primary ta	
18there. You see that? And then you've got the Nyala.18to sweep the koppie 1, there were still movements	
19 Chairperson, that's Nyala 3, we say, and then you have that 19 1 and it was still supposed to be swept. So I instru	
20 line of members there. You see that?20 Captain Cwinyane to take care of koppie 1 with 19	
21 CHAIRPERSON: It's a Nyala with an empty 21 and Colonel Nkebe was given koppie 2 because the	ו TRT was
22 wire trailer.22 not available to do it as planned.	
23 MS BALOYI: Indeed with an empty trailer. 23 MS BALOYI: And then you say, "I wer	
24 CHAIRPERSON: Which is just to the right 24 straight between two koppies 1 and 2." Can you in	
25 below, diagonally to the right below the mast on the 25 with the pointer where you moved to, how you moved to a second	'ed?
Dama 20401	Dama 20402
Page 30491 1 photograph. 1 COLONEL MODIBA: Ja, I'd gone thru	Page 30493 bugh the
2 MS BALOYI: Yes. Now Colonel, when you 2 two koppies, koppie 1 and koppie 2, with some o	-
3 say that you jumped, I think you say between the Nyala and 3 members and Captain Cwinyane went to the left	
4 the trailer, it is this Nyala that you're talking about, 4 going to west from east, and then Nkebe took ca	
5 this Nyala 3? 5 one with some of the members.	
6 COLONEL MODIBA: Ja, it's supposed to be 6 MS BALOYI: So you did –	
7 Nyala 3, Chairperson. 7 COLONEL MODIBA: And then I wen	through.
8 MS BALOYI: Yes, now did all of your 8 MS BALOYI: Yes, you didn't go into	-
9 members come through that gap there that you describe? 9 of the koppies?	5
10 COLONEL MODIBA: Ja, we all used that 10 COLONEL MODIBA: Negative. I did	ı't go
11 exit towards the side of the koppie 1. 11 through, I mean to any of the koppies. I just wa	•
12 MS BALOYI: And immediately after coming 12 through with the members between the two –	
	1
	4
13 through there, through between the Nyala and the trailer, 13 CHAIRPERSON: Do I understand yo	
13through there, through between the Nyala and the trailer,13CHAIRPERSON:Do I understand yo14the empty trailer, you say you then formed up in that line14correctly, when you spoke about one of the office	
13through there, through between the Nyala and the trailer,13CHAIRPERSON:Do I understand yo14the empty trailer, you say you then formed up in that line14correctly, when you spoke about one of the office15there, in that basic line?15to the left you meant his left, the right on the	
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 13 through there, through between the Nyala and the trailer, 14 the empty trailer, you say you then formed up in that line 15 there, in that basic line? 16 COLONEL MODIBA: Yes, we made up a basic 17 line advancing to both koppie 1 and 2, Chairperson. 18 MS BALOYI: Now if we could then go back 13 CHAIRPERSON: Do I understand yo 14 correctly, when you spoke about one of the office 15 to the left you meant his left, the right on the 16 photograph? Is that right? 17 COLONEL MODIBA: Ja, that's the – 18 CHAIRPERSON: The one who went 	rs going o koppie
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1	Page 30494 COLONEL MODIBA: That's their left and	1	Page 30496 you were charged upon by these strikers?
2	right. That's their left, our right –	2	COLONEL MODIBA: As we were approaching,
3	CHAIRPERSON: Their left, our right.	3	Chairperson, we were at that angle when the strikers
4	COLONEL MODIBA: Yes.	4	emerged behind the rocks and bushes here and they came
5	CHAIRPERSON: As we look at the	5	charging, having assortments of dangerous weapon in
6	photograph, alright.	6	assegais, axes and knobkieries.
7	MS BALOYI: And then you say in paragraph	7	CHAIRPERSON: Let me get this right. Am
8	12, "The miners were running back to koppie 3 and burning	8	I correct in thinking that you've indicated that your line
9	veld. There was a lot of smoke as a result. As going	9	was approaching, moving from right to left on the slide and
10	between koppie - I heard Brigadier Calitz saying everyone	10	more or less in the block which we can describe as J3? Is
11	must move forward and do arrests." And then you go on to	11	that correct? J3, J2, the two together. Can you see –
12	say, "We followed in our formation towards koppie 3." When	12	MS BALOYI: I3 –
13	you say "in our formation," what formation are you talking	13	CHAIRPERSON: If you look at the scene on
14	about? You say you followed in your formation towards	14	the screen, you'll see –
15	koppie 3.	15	MS BALOYI: Chair, it looks more like
16	COLONEL MODIBA: I'm referring to the	16	13 –
17	basic line that we formed up –	17	CHAIRPERSON: - you'll see the letters
18	MS BALOYI: Yes.	18	are at the top and you'll see the numbers down the side.
19	COLONEL MODIBA: - when approaching to	19	COLONEL MODIBA: Yes.
20	koppie 3, Chairperson.	20	CHAIRPERSON: So you indicated on the
21	MS BALOYI: And then you say that	21	screen that your members, as I understand it, in the line
22	"Lieutenant-Colonel Nkebe was always on my right in the	22	you described were approaching from right to left on the
23	line." This is in the basic line. Am I correct?	23	slide, and I thought you showed us that they were in blocks
24	COLONEL MODIBA: That's correct, basic	24	J2 and J3. Is that correct?
25	line.	25	COLONEL MODIBA: That's correct,
20		20	
	Page 30495		Page 30497
1	MS BALOYI: Then "We approached the	1	Chairperson.
2	koppie, alternating kneeling and standing positions." You	2	CHAIRPERSON: And if you can see the
3	see that? "Moving tactically towards koppie 3." You see	3	letters and the numbers, can you indicated by identifying
4	that?		
1		4	the block or blocks which are relevant in order for us to
5	COLONEL MODIBA: Yes.	4 5	the block or blocks which are relevant in order for us to understand where the strikers were coming from?
5	COLONEL MODIBA: Yes.	5	understand where the strikers were coming from?
5 6	COLONEL MODIBA: Yes. MS BALOYI: And in the next paragraph 13	5 6	understand where the strikers were coming from? COLONEL MODIBA: I will talk about these
5 6 7	COLONEL MODIBA:Yes.MS BALOYI:And in the next paragraph 13you say, "Just before we entered koppie 3 three armed	5 6 7	understand where the strikers were coming from? COLONEL MODIBA: I will talk about these two blocks here, this one and that one.
5 6 7 8	COLONEL MODIBA:Yes.MS BALOYI:And in the next paragraph 13you say, "Just before we entered koppie 3 three armedminers emerged from behind rocks and charged at our basic	5 6 7 8	understand where the strikers were coming from? COLONEL MODIBA: I will talk about these two blocks here, this one and that one. CHAIRPERSON: You show 13 and 14 – 13 and
5 6 7 8 9	COLONEL MODIBA:Yes.MS BALOYI:And in the next paragraph 13you say, "Just before we entered koppie 3 three armedminers emerged from behind rocks and charged at our basicline."	5 6 7 8 9	understand where the strikers were coming from? COLONEL MODIBA: I will talk about these two blocks here, this one and that one. CHAIRPERSON: You show I3 and I4 – I3 and J3.
5 6 7 8 9 10	COLONEL MODIBA:Yes.MS BALOYI:And in the next paragraph 13you say, "Just before we entered koppie 3 three armedminers emerged from behind rocks and charged at our basicline."CHAIRPERSON:May I suggest –	5 6 7 8 9 10	understand where the strikers were coming from? COLONEL MODIBA: I will talk about these two blocks here, this one and that one. CHAIRPERSON: You show I3 and I4 – I3 and J3. COLONEL MODIBA: That's correct,
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	Page 30498		Page 30500
1	in J3, there where the –	1	you're moving the pointer up and down but in the line G,
2	MS BALOYI: And were you able to see	2	the line of blocks which are headed by the letter G and you
3	where these bullets were coming from, the direction?	3	thought it was between 4 and 5. Is that correct?
4	COLONEL MODIBA: I assumed they, the	4	COLONEL MODIBA: It was between 3 and 4,
5	direction was from the, was from koppie 3 to our side.	5	the left of –
6	MS BALOYI: When you say from koppie 3,	6	CHAIRPERSON: 3 and 4 thank you.
7	which part of koppie 3? Were you able to make out where	7	COLONEL MODIBA: Ja 3 and 4.
8	they were coming from?	8	MS BALOYI: Then you go on to describe
9	COLONEL MODIBA: It was from this	9	the crowd. You say "This aggressive group approached the
10	direction. We could hear the sounds as they were flying.	10	line" the group that you had defined as 15 or 20 of them,
11	MS BALOYI: Yes. Chair –	11	you say they approached the line as they were coming 12 to
12	CHAIRPERSON: You indicate with the	12	15 metres away and you say "I shouted stop, stop but they
13	pointer a line moving along line 3, the blocks 3, and I	13	did not." Do you see that in your statement?
14	think you started the pointed round about H, possibly even	14	COLONEL MODIBA: Yes, I can see.
15	G, and you moved to the right into I and J. Is that	15	MS BALOYI: And you say then you fired
16	correct? All in line, in the line of blocks marked 3. Is	16	warning shots. Won't you indicate where you were, with
17	that correct?	17	reference to this slide again, where you were when you
18	COLONEL MODIBA: Ja, we'll be talking	18	fired the warning shot?
19	between this H block, I and J. That's where we were	19	COLONEL MODIBA: I fired warning shots
20	approaching.	20	just from that point into I3.
21	MS BALOYI: Yes, what I had asked you was	21	MS BALOYI: So you were at J3 and you
22	when you heard these zips of bullets, as you described	22	fired into 13, is that what you're saying?
23	them, were you able to make out where they were coming	23	COLONEL MODIBA: That's correct.
24	from, and I thought you pointed out from the middle of the	24	CHAIRPERSON: It looks as if you were in
25	koppie in that direction. Am I correct?	25	the bottom left-hand corner of J3 is that correct and you
	Page 30499		Page 30501
1	Page 30499 COLONEL MODIBA: That's correct,	1	Page 30501 fired into 13?
1 2		1 2	
	COLONEL MODIBA: That's correct,		fired into 13?
2	COLONEL MODIBA: That's correct, Chairperson.	2	fired into 13? MS BALOYI: Colonel?
2 3	COLONEL MODIBA: That's correct, Chairperson. MS BALOYI: Yes, in the middle of the	2 3	fired into 13? MS BALOYI: Colonel? CHAIRPERSON: Is that right? That's what
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	Page 30502		Page 30504
1	COLONEL MODIBA: Could you rephrase the	1	top of the photograph.
2	question, Chairperson?	2	COLONEL MODIBA: That's correct,
3	CHAIRPERSON: What you described, I	3	Chairperson.
4	think, was these armed strikers moving from H3 to I3.	4	MS BALOYI: And where were you when you
5	COLONEL MODIBA: Yes, that was the	5	saw the group of General Naidoo? Won't you please
6	direction they were heading as they were charging at our	6	indicate, where exactly were you?
7	basic line.	7	COLONEL MODIBA: I was somewhere there in
8	MS BALOYI: And then you say other	8	13.
9	members also fired. Did the NIU still maintain a basic	9	MS BALOYI: Okay. And then you say you
10	line at this point, where you stood in formation?	10	then saw Mr Mdizeni. At the time when you saw him did you
11	COLONEL MODIBA: Yes, we still maintained	11	see whether he was still alive or he had passed on?
12	our basic line that we had been maintaining all the way	12	COLONEL MODIBA: Chairperson, it was not
13	from the time when we move out the barbed wire.	13	only Mr Mdizeni that was at the face of the big rock, there
14	MS BALOYI: Yes, and then you say some of	14	were also some of the striking miners that were there. And
15	the group went back to koppie 3, I'm still reading from	15	then I couldn't make out that whether there was any person
16	your statement, "some of the group moved back, went back to	16	who was killed or one or the other.
17	koppie 3, we moved closer. As we were by the big rock I	17	CHAIRPERSON: These striking miners that
18	saw what is body A" and then you give a picture number	18	you refer to were they standing or sitting or lying?
19	there. Do you see that? Chairperson, the person that	19	COLONEL MODIBA: At that time they were
20	we've described as body A his name is Mr Anele Mdizeni.	20	charging at us from that point. We were in J3 and then
21	CHAIRPERSON: Yes if we're going to see	21	they charged carrying those dangerous weapons and then I
22	that picture then I think I should give a warning but if	22	shouted stop, stop. I fired and they still kept coming, I
23	you're not going to show the picture I don't have to.	23	fired in the ground so the members did as well and then
24	MS BALOYI: Chair, I wasn't going to show	24	some of them went back in the bush behind the rocks, left
25	the picture.	25	and right.
	Page 30503		Page 30505
1	CHAIRPERSON: Can you show us the big	1	CHAIRPERSON: Can you again give us the
2	rock while you're about it?	2	block numbers to which you're referring? It's shown on the
3	COLONEL MODIBA: That's the big rock,	3	screen but you moved the pointer quite quickly. It looks
4 5	Chairperson, that's the bottom of it. CHAIRPERSON: The big rock is in F2 and	4 5	like G3 and H2 is that correct? COLONEL MODIBA: In H2 that's where some
6	F3 and by the bottom that you're referring to, part of the	6	of them went back in the bush and others went across to
7	rock, the extreme right-hand side looks like almost the	7	this direction, yes in this bush.
8	right top corner of F3 isn't that right?	8	CHAIRPERSON: That looks like G3
9	COLONEL MODIBA: That's correct,	9	actually, possibly even F as well.
10	Chairperson.	10	COLONEL MODIBA: No it's G3, some they
11	MS BALOYI: Now at the point before you	11	went left and others went to H2 in that bush.
12	went into the big rock, into the koppie to the big rock did	12	CHAIRPERSON: All right, yes thank you,
13	you become aware that there were other units of the SAPS	13	we now see it thank you. How many people were with General
14	around or inside the koppie, before you went in?	14	Naidoo, how many members were with General Naidoo?
15	COLONEL MODIBA: No at that time I could	15	COLONEL MODIBA: With my observation he
16	only notice the group that came from the southern side	16	didn't have a large number of personnel with him.
	····· ···· ··· ··· ··· ···· ··· ···· ····	17	CHAIRPERSON: He wasn't alone though.
17	that's General Naidoo and a few members, they met from this	17	
17 18		18	COLONEL MODIBA: No he wasn't alone,
	that's General Naidoo and a few members, they met from this southern side. That's the group that I could identify. CHAIRPERSON: You're indicating G4, I		there could have been, although I did not count them, there
18 19 20	that's General Naidoo and a few members, they met from this southern side. That's the group that I could identify. CHAIRPERSON: You're indicating G4, I think. Is that right, G4? They were coming from your	18 19 20	there could have been, although I did not count them, there was no time to count but I think there were not even 10,
18 19 20 21	that's General Naidoo and a few members, they met from this southern side. That's the group that I could identify. CHAIRPERSON: You're indicating G4, I think. Is that right, G4? They were coming from your left.	18 19 20 21	there could have been, although I did not count them, there was no time to count but I think there were not even 10, there were less.
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1	Page 30506 COLONEL MODIBA: Ja there was a firing,	1	Page 30508
1	5	1	before – I waited here because there was still shooting
2	as I said earlier on, as we were approaching there was a	2	from the western side. I didn't just go smoothly through
3	firing from the southern side.	3	right around. I first waited until the shooting has
4	CHAIRPERSON: That would be from his	4	stopped.
5	group would it, as far as you could tell?	5	CHAIRPERSON: You indicate you waited in
6	COLONEL MODIBA: That's a possibility or	6	F2 then you moved into E2, then you moved to the top line,
7	even – ja because on the southern side, if the sound was	7	then you went from left to right on the photograph, on the
8	coming from the southern side then –	8	slide and it looks as if you came down again either at H1
9	CHAIRPERSON: It was his group or people	9	or even I1. And you came around as I said in a clockwise
10	behind his group further to the south. Is that right?	10	direction and ended up more or less where you started. Is
11	COLONEL MODIBA: The sound was coming	11	that right?
12	from G4.	12	COLONEL MODIBA: That's correct,
13	CHAIRPERSON: Yes, I see, thank you.	13	Chairperson.
14	MS BALOYI: Thank you, Chair. Then you	14	MS BALOYI: Still in that paragraph, back
15	say – back to your statement, Colonel, in line 8 of your	15	to your statement, Colonel, still in that paragraph 13 you
16	statement, paragraph 13 it starts "I noticed General Naidoo	16	say in the second last line "I could see to the west" this
17	to my left" and then you say "General Naidoo climbed over	17	is after you've described your movements, you say "I could
18	rocks to the left of the big rock." Can you point out on	18	see to the west how miners were charging and running and
19	that slide where he climbed, what you are describing?	19	heard gunshots coming from there. Then I lowered down."
20	COLONEL MODIBA: Ja, he climbed on the	20	Do you see that?
21	left. Left is there and then he went to this direction.	21	COLONEL MODIBA: Yes I can see,
22	MS BALOYI: You're pointing him climbing	22	Chairperson.
23	at F3 going in the direction of C4.	23	MS BALOYI: Yes, now if we could have
24	COLONEL MODIBA: Yes, that direction.	24	L242 so that we you point out what you are describing.
25	CHAIRPERSON: You saw him at F3 and then	25	You've just described or shown us your movements. You see
	Page 30507		Page 30509
1	you saw him moving in the direction of E3, is that right?	1	in this picture to the right-hand side where it's written
1 2	you saw him moving in the direction of E3, is that right? COLONEL MODIBA: That's correct,	1 2	in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up,
	you saw him moving in the direction of E3, is that right?		in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up, it's a dotted line in orange and then there's an arrow, in
2	you saw him moving in the direction of E3, is that right? COLONEL MODIBA: That's correct,	2	in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up,
2 3	you saw him moving in the direction of E3, is that right? COLONEL MODIBA: That's correct, Chairperson.	2 3	in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up, it's a dotted line in orange and then there's an arrow, in
2 3 4	you saw him moving in the direction of E3, is that right? COLONEL MODIBA: That's correct, Chairperson. MS BALOYI: Thank you, Chair. And then	2 3 4	in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up, it's a dotted line in orange and then there's an arrow, in that is written NIU. It's an orange arrow, do you see
2 3 4 5	you saw him moving in the direction of E3, is that right? COLONEL MODIBA: That's correct, Chairperson. MS BALOYI: Thank you, Chair. And then you say "I went to the right in between it and bushes."	2 3 4 5	in this picture to the right-hand side where it's written eastern there's a dotted line that goes from the bottom up, it's a dotted line in orange and then there's an arrow, in that is written NIU. It's an orange arrow, do you see that? It's the bottom right and then there are three
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1	Page 30510 four vehicles. I think it's four vehicles and below those	1	Page 30512 photograph. Below the word, the end of "western" one sees
2	one sees more rocks and bushes and below those rocks and to	2	a vehicle. If one moves to the right and slightly
3	the left there's an open space, is that where the miners	3	downwards one sees some trees or bushes and some rocks.
4	were, the strikers?	4	COLONEL MODIBA: Yes.
5	COLONEL MODIBA: No at that point,	5	CHAIRPERSON: That is, as I understand
6	Chairperson, they came out from there.	6	it, where you're telling us that the police members were,
7	CHAIRPERSON: Oh I see. You've got them	7	that vicinity. As one then proceeds further in a straight
8	- actually you've got them above the rocks or in the bushes	8	line moving across the page parallel with the bottom of the
9	between the bushes and the rocks and would be the second of	9	page, one then sees further bushes and rocks and to the
10	the four, counting from the left, the second of those	10	right of those is the space that I referred to earlier
11	vehicles I refer to. So below that vehicle and towards the	11	which is diagonally downwards to the left from that second
12	bushes and rocks that one sees there, diagonally to the	12	vehicle I referred to. Do you understand that? Directly
13	left downwards from that vehicle. Is that correct?	13	opposite where I said the police were there's a clearing
14	COLONEL MODIBA: If I understood what	14	and on the right-hand side of that clearing more bushes and
15	Chairperson is saying or what I mention that strikers, the	15	trees and that's where the miners were, is that right?
16	confrontation was from here towards that direction and the	16	COLONEL MODIBA: Ja, the miners were
17	police were coming from the left into koppie 3.	17	there. Ja, they –
18	CHAIRPERSON: Yes, I described the place	18	CHAIRPERSON: Do you understand now?
19	you referred to as being diagonally to the left and	19	Have I got it right?
20	downwards from that second vehicle there's an area there	20	COLONEL MODIBA: Yes, Chairperson.
21	where there are bushes and rocks and so forth. And you	21	CHAIRPERSON: Alright. Okay, now we can
22	indicate you then went more or less straight to the left	22	carry on.
23	indicating that there's an empty area and on the other side	23	MS BALOYI: Colonel, just to avoid doubt,
24	there are more trees and bushes and rocks. And that's	24	won't you indicate where you say the miners were?
25	where the members were, the police were. I think that's	25	COLONEL MODIBA: The miners were
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	Page 30511		Page 30513
1	what you showed us, is that right?	1	somewhere there and the police came - the confrontation was
1 2	what you showed us, is that right? COLONEL MODIBA: I just want to make	1 2	somewhere there and the police came – the confrontation was between them and the police, the police were from this
2 3	what you showed us, is that right? COLONEL MODIBA: I just want to make sure, maybe if someone can show the pointer where the –	2 3	somewhere there and the police came – the confrontation was between them and the police, the police were from this direction and they came there from the koppie towards the
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	Page 30514		Page 30516
1	COLONEL MODIBA: Ja. Body A was just in	1	either of them was shot by the members who were shooting in
2	front, just there where those that were lying there had	2	your line-up?
3	been cleared and then –	3	COLONEL MODIBA: It is a possibility that
4	CHAIRPERSON: If one looks at this slide	4	they might have been caught by the warning shots that were
5	which is slide 242 of exhibit L, one sees a red circle with	5	fired, that as a result of the ricochet it could have hit
6	three arrows going into it and I think you've indicated	6	them. That is a possibility, I can't rule that one out but
7	that body A was in the vicinity of the left-hand arrowhead	7	the difficulty is for me to say I know so and so shot
8	in that circle, is that correct?	8 9	Mdizeni or Thelejane.
9	COLONEL MODIBA: That's correct,		CHAIRPERSON: There were also shots, I
10	Chairperson.	10	think you said, fired by or coming from the direction of
11	CHAIRPERSON: And were there other bodies	11	General Naidoo's group and also possibly behind General
12	in that vicinity as well? They were not bodies in the	12	Naidoo's group. That's right, isn't it? COLONEL MODIBA: I can't confirm that.
13	technical sense, they were people lying down, is that	13	
14 15	right, as we now know?	14 15	CHAIRPERSON: No, I say didn't you say
15	COLONEL MODIBA: They were along with	15	that you heard shots coming from the direction of General
16	body A –	16	Naidoo's group or even from behind General Naidoo's group?
17	CHAIRPERSON: Ja.	17	You did say that?
18	COLONEL MODIBA: They were just next to	18	COLONEL MODIBA: Yes, I said from the
19	it.	19 20	south, southern direction.
20	CHAIRPERSON: Yes and where was body B?	20	CHAIRPERSON: What I'm asking you, is it
21	Remind me of the name of –	21 22	possible that one of those shots or two of those shots
22	MS BALOYI: Thelejane, Mr Thelejane. CHAIRPERSON: Mr Thelejane yes, that's	22 23	could have been responsible for these two deaths? COLONEL MODIBA: Yes, it could be as a
23	3 3 1	23 24	result of the shots coming from the south, shots coming
24 25	right, where was Mr Thelejane's body when you saw it? COLONEL MODIBA: I assume he was among	24 25	from NIU, but I cannot be certain about to say it was the
20	COLONEL MODIDA. I assume he was among	25	
	Page 30515		Page 30517
1	those that were lying there. I only noticed now that	1	shot from southern side or a shot from the eastern side.
2	those that were lying there. I only noticed now that there's yet another body that was –	2	shot from southern side or a shot from the eastern side. CHAIRPERSON: Yes, I understand it's
2 3	those that were lying there. I only noticed now that there's yet another body that was – CHAIRPERSON: It was in the same area in	2 3	shot from southern side or a shot from the eastern side. CHAIRPERSON: Yes, I understand it's impossible for you to say. All you can deal with is
2 3 4	those that were lying there. I only noticed now that there's yet another body that was – CHAIRPERSON: It was in the same area in that red circle which we see on the slide.	2 3 4	shot from southern side or a shot from the eastern side. CHAIRPERSON: Yes, I understand it's impossible for you to say. All you can deal with is possibilities.
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1	Page 30518	1	Page 30520
1	when you use the word "charging," what does that mean?	1	note we will take the tea adjournment.
2	What were they doing?	2	[COMMISSION ADJOURNS COMMISSION RESUMES]
3	COLONEL MODIBA: Charging, they ran in a	3	[12:08] CHAIRPERSON: The Commission resumes.
4	hostile, an aggressive manner towards our basic line. That	4	Before I remind the Colonel he's still under oath, I think
5	is the charging, running.	5	we have some housekeeping to do, Mr Chaskalson. According
6	COMMISSIONER HEMRAJ: An aggressive	6	to your list you've got three new exhibits. Is that
7	manner?	7	correct? The first is number 18 on your list. Is that
8	COLONEL MODIBA: You could see – in a	8	correct?
9	violent manner, I could put it like that.	9	MR CHASKALSON SC: Yes, Chairperson, but
10	COMMISSIONER HEMRAJ: What were they	10	it turns out that that is the, we've been given the wrong
11	doing that gave you that impression?	11	movement report by SAPS, so let's not make that an exhibit.
12	COLONEL MODIBA: They were brandishing	12	CHAIRPERSON: So the first one of these
13	dangerous weapons.	13	new exhibits will then be the number 19, the expert report
14	CHAIRPERSON: Your time is actually up	14	of Dr Naidoo and Mr Steyl?
15	but I'll give you a few more minutes to round up. I	15	MR CHASKALSON SC: That's correct,
16	wouldn't have thought you have to lead the contents of para	16	Chairperson.
17	14 in the statement but you may wish to just finish what's	17	CHAIRPERSON: And that will be ZZZ5.
18	in para 13 and ask further roundup questions if you wish.	18	MR CHASKALSON SC: That's correct.
19	MS BALOYI: Thank you. Thank you,	19	CHAIRPERSON: And then ZZZ6, will that be
20	Chairperson. Colonel, other than the shooting that you did	20	number 21 –
21	when you were in the basic line with members of the NIU,	21	MR CHASKALSON SC: Chairperson, we've
22	did you at any point fire again at any point after you had	22	already got the primary Plaatjies affidavit or statement as
23	first fired at the basic line?	23	JJJ60, so why don't we make this JJJ60A or point 1?
24	COLONEL MODIBA: No, I never fired again.	24	CHAIRPERSON: JJJ60, six-oh?
25	The only rounds that I fired were five in that basic line	25	MR CHASKALSON SC: Six-zero.
	Page 30519		Page 30521
1	where I indicated earlier. From there, I never fired.	1	CHAIRPERSON: Six-zero, A. I think we
2	where I indicated earlier. From there, I never fired. MS BALOYI: Thank you, that is the	2	CHAIRPERSON: Six-zero, A. I think we used bis at one stage. Let's call it bis. That's an
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	Page 30522		Page 30524
1	it, or at least put it on record.	1	I think that was what I reminded the Chair about.
2	CHAIRPERSON: Ja well, Ms Baloyi and her	2	MR CHASKALSON SC: Commissioner, you're
3	attorney have heard what you said and I take it they've	3	absolutely right. I think this is something that SAPS and
4	taken notice of what you've said and that we'll get the	4	I should sort out because we have been given AVL records,
5	relevant report, the movement report for the witness's	5	those were for I think Major-General Naidoo's vehicle, the
6	vehicle as soon as possible. Is that correct, Ms Baloyi?	6	ones in question, and Captain Kidd's vehicle, and we've
7	MS BALOYI: Chair, we will attend to it,	7	been given other vehicles that have additional readings
8	yes.	8	for, other records that have additional readings for those
9	CHAIRPERSON: No, I didn't ask you to	9	vehicles –
10	attend to it. I said we'll get it as soon as possible. Is	10	CHAIRPERSON: Yes, yes, that's right.
11	that correct?	11	The data that Ms Le Roux had was at something like 15-
12	MS BALOYI: Chair, I answered that way	12	minute intervals and it seems clear from some of the other
13	because I was told this morning that in fact what Mr	13	reports we had that data should be available at shorter
14	Chaskalson has been given is the correct report. So we'll	14	intervals than that. I think that's the point. Anyway, if
15	go back and make proper –	15	you and Ms Baloyi can discuss this outside the chamber then
16	CHAIRPERSON: Well, then the witness was	16	we'll presumably get the reports that are required as soon
17	at Soshanguve then at 2:30 –	17	as possible.
18	MS BALOYI: Yes, then he was shown –	18	MS BALOYI: We'll do so, Chair.
19	CHAIRPERSON: - which is a serious inroad	19	CROSS-EXAMINATION BY MR CHASKALSON SC:
20	on his credibility if that's correct, isn't it?	20	Colonel, to begin with, I just want to address a few
21	MS BALOYI: No, Chairperson, there may	21	matters that flowed from your evidence today that we hadn't
22	well be an explanation for it, but I'll go back and get a	22	seen in the statement. The first is your starting position
23	proper response.	23	on the 16th. You described your position on what was the
24	CHAIRPERSON: Thank you very much.	24 25	northern, north-western edge of the power station. We
25	Alright.	25	found some photographs and I'd just like to show them to
	Page 30523		Page 30525
1	Page 30523 MR CHASKALSON SC: The vehicle in	1	Page 30525 you to see if we've identified your vehicles correctly in
1 2	-	1 2	0
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1	substation which – because we were not far from the	1	koppie 3, some going to Karee Mine, some coming into the
2	substation, if maybe we can zoom –	2	koppie and we just observed." So you were aware in the
3	CHAIRPERSON: For the purpose you've got	3	morning of the 16th that there was movement between koppies
4	to look at the whole picture again then to get your	4	1 and 2 on the one hand, which is where most of the miners
5	bearings there.	5	were gathered opposite the SAPS, and koppie 3 on the other
6	MR CHASKALSON SC: Maybe if we can show	6	hand, which was behind those koppies. You were aware of
7	another one which might be of better assistance to you,	7	movement between koppies 1 and 2 and koppie 3. Is that
8	it's JJJ10.4523, and this is taken from the north, so I'm	, 8	correct?
9		9	COLONEL MODIBA: At the distance where I
	marking now koppie 2, koppie 1, and that would be the		
10	substation behind koppie 1 and again those vehicles that we	10	was standing, where our vehicles were parked, I could
11	saw on the earlier photograph are in the top right-hand	11	observe koppie 1 and koppie 3 clearly.
12	corner of this photograph. Koppie 3 would be to the right	12	MR CHASKALSON SC: Yes, but my question
13	of this photograph, off-screen.	13	to you is did you see movement of miners between those
14	COLONEL MODIBA: If I could remember	14	koppies? Which is what is suggested by paragraph 6 of your
15	well, from the morning we were the only vehicles next to	15	statement; "miners going up and down, some going into
16	the substation there on the southern side of koppie 1.	16	koppie 3, some going to Karee Mine."
17	MR CHASKALSON SC: This is the substation	17	COLONEL MODIBA: Especially those that,
18	on the southern side of koppie 1, the larger substation.	18	Chairperson, that were going towards koppie 3, between
19	COLONEL MODIBA: That could be our	19	koppie 3 and koppie 2 and that also walked past us towards
20	vehicles because if I recall back there were no any other	20	Karee Mine and in, those yes, that's the movement I'm
21	vehicles except us next to that substation.	21	referring to in my statement.
22	COMMISSIONER HEMRAJ: How many vehicles	22	COMMISSIONER HEMRAJ: Which direction is
23	were there in your contingent?	23	Karee here on this photograph, Mr Chaskalson?
24	COLONEL MODIBA: I can take a guess of	24	MR CHASKALSON SC: It's a long way to the
25	about four with my vehicles.	25	right.
	Page 30527		Page 30529
1	Page 30527 CHAIRPERSON: One can see about four	1	Page 30529 COMMISSIONER HEMRAJ: Yes, thank you.
1 2	•	1 2	•
	CHAIRPERSON: One can see about four		COMMISSIONER HEMRAJ: Yes, thank you.
2	CHAIRPERSON: One can see about four there.	2	COMMISSIONER HEMRAJ: Yes, thank you. MR CHASKALSON SC: But it's a long way
2 3	CHAIRPERSON: One can see about four there. MR NTSEBEZA SC: Mr Chair, is it possible	2 3	COMMISSIONER HEMRAJ: Yes, thank you. MR CHASKALSON SC: But it's a long way past koppie 3. How much movement of miners in and through
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		[
1	Page 30534 to sweep koppie 1 for dangerous weapons that may be there	1	Page 30536 Chairperson, as I alluded earlier that during the briefing
2	and for armed protestors that may still be in that koppie.	2	at 14:30 the negotiations were still to happen and then if
3	There were 96 of my members including myself at that time.	3	that did not materialise, the plan was we're going to form
	As the protestors moved to koppie 3 I directed 19 of my	4	up in those lines to give back-up for the dispersal by POP.
4			
5	members to remain sweeping koppie 1 and took 77 of my	5	Yes the negotiations were still going to continue,
6	members to sweep koppie 2 and koppie 3 where the protestors	6	Chairperson.
7	had proceeded." Now I just want to clarify that at the	7	MR CHASKALSON SC: And how did you
8	time, during the operation, you were aware that after the	8	understand those negotiations were going to take place?
9	scene 1 shootings a substantial number of strikers had	9	Who was going to conduct them, where were they going to
10	retreated to koppie 3. Were you aware of that?	10	take place?
11	COLONEL MODIBA: Yes, just after the	11	COLONEL MODIBA: With my knowledge I know
12	shooting they first regrouped in koppie 2, then we went out	12	Colonel McIntosh was one of the negotiation team for the
13	between the trailer and the Nyala and form up with a basic	13	SAPS, so it could be where they normally did their
14	line. That's when now they moved further to koppie 3. I	14	negotiations.
15	could see them.	15	MR CHASKALSON SC: And until you saw the
16	MR CHASKALSON SC: So you could see them	16	strikers running around, you thought that the negotiations
17	moving in to koppie 3.	17	were still going to happen, is that correct?
18	COLONEL MODIBA: Yes I see them. From	18	COLONEL MODIBA: At the time I saw the
19	koppie 1 to 2, from 2 to 3. That I could see, Chairperson.	19	striking miners running around, Chairperson, that's when I
20	MR CHASKALSON SC: Then to clarify	20	was under the impression that seemingly negotiations didn't
21	something which I suspect may just be an error, but if it's	21	succeed, so that means we were to form up accordingly. So
22	not please tell me. ZZZ2.2 which was your statement of 25	22	that was my impression because obviously if the
23	August 2012, and if we can go to paragraph 3 where you're	23	negotiations were still on, the striking miners wouldn't
24	describing the briefing that you received from Lieutenant-	24	have looked the way they were when they ran around that
25	Colonel Scott. "At about 14:30 I was called to attend a	25	Nyala which was pulling the barbed wire towards the kraal.
1	Page 30535	1	Page 30537
1	briefing about a plan of action at forward holding area 1,	1	MR CHASKALSON SC: So until you saw them
2	briefing about a plan of action at forward holding area 1, next to smelter's plants. The briefing was given by	2	MR CHASKALSON SC: So until you saw them running around, or running, try to get in front of that
2 3	briefing about a plan of action at forward holding area 1, next to smelter's plants. The briefing was given by Lieutenant-Colonel Scott of Special Task Force. During the	2 3	MR CHASKALSON SC: So until you saw them running around, or running, try to get in front of that barbed wire, you didn't realise that your men had to form
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1	Page 30538	1	Page 30540
1 2	the four vehicles that one sees broadly parallel with the shack opposite the kraal. Where were your men going to	1	option was going to take the form of putting the wire barrier up. Calitz was then going to go and address the -
2	form up in terms of the operation. Where would you have	2	we're going to move forward, I think in that we've called
4	wanted your men to form up if you had called them to form	4	the corridor. They thought that the miners would be
5	up in terms of the operation?	5	somewhere above the kraal to the left of the koppie side of
6	COLONEL MODIBA: They would form up next	6	the barrier. Calitz was going to give them the two
7	to the kraal, just before the entry into that kraal.	7	warnings in vernacular languages to disperse - lay down
8			
	5	8	their arms and disperse and if, of course, something else
9	got a pointer, but if you can identify the position as to	9	happened, then they had to be ready for it and I suspect
10 11	where you - COLONEL MODIBA: That's where the	10 11	that the negotiations he's talking about now is not what one can call McIntosh negotiations but the warnings and so
12	formation was going to take place. Just in front. Next to	12	forth that were to be given by Brigadier Calitz. If I'm
13	the kraal there.	13	correct in thinking that, then the two of you are talking
14	MR CHASKALSON SC: So just to the left of	14	past each other. That's something you can investigate
15	the path underneath the kraal. On this photograph, and	15	because otherwise we may get stuck in what amounts to a
16	parallel with that path.	16	point that isn't going to help us.
17 18	COLONEL MODIBA: Ja, somewhere there, Chairperson.	17 18	MR CHASKALSON SC: Colonel, I don't know if you followed what the chairperson was putting to me.
10	MR CHASKALSON SC: And at what point	10	Did it make sense to you? Are the negotiations that you
20	would you have moved them into that position in terms of	20	thought were going to take place essentially an
20	your understanding of the operation?	20	announcement from Brigadier Calitz that people must leave
22	COLONEL MODIBA: That would be determined	22	their weapons and put down their weapons and leave the
23	by the results of the negotiations. If the negotiations	22	koppie.
23	were to succeed, we would still be hanging there in the	23	COLONEL MODIBA: That will be correct,
24	area, then the POP would then go on retrieving the	24	taking into account that Brigadier Calitz was the
20	area, then the for would then go on retreving the	20	taking into account that brigadier oantz was the
	Page 30539		Page 30541
1	Page 30539 dangerous weapons. So fortunately at that time we didn't	1	Page 30541 operational commander. He was the one to execute that
1 2		1 2	•
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1 loggerheads about laying down arms - In other words the earlier negulations that hab bene moducted in regard to the laying down of arms had not produced the desired results. Am I interpreting what you say correctly? 1 MR NTSEBEZASC: Which are have you been Mr 2 COLONEL MODIBA: That's correct. 5 Nitsbazz. Nitsbazz. Nitsbazz. Nitsbazz. Which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below which we're used as a fixed point, and Immolarly below parallel with the bottom of the photograph, there are - well 1 batted wire hygals? Sony: on the photon, onto in the map. COLONEL MODIBA: I was still at that son, Chairperson. Not far from my group. I was moving towards that longish line of vehicles which I referred to earlier. 1 MR CHASKLSON SC: CHAIRPERSON: That's where the pointer is. Starting with the point in the middle of hat line. 1		Page 30542		Page 30544
 the laying down of arms had not produced the desired in section. whelke is? Negotiating Nyala. Sorry to interrupt. URARGRESON: Where have you been Mr COLONEL MODIBA: That's correct. Chargerson. MR CHASKALSON SC: Well if we go back to the photograph, you've capitaling hyala was now going to comment. Can you mark the position of the map where you were when you saw the miners running parallel to the photograph, you've capitaling hyala, as i to mark start point of the photograph, there are - well was start at the photograph to be cach other in a line you were when you saw the miners running parallel to the the latt. The negatiling Nyala, as i to mark that's pointer. That's where the pointer the latt. The start were when you saw the miners running parallel to the the latt. The negatiling Nyala, as i to chard with Nyala? Sorry, on the photograph, there are - well was start at direction. To north direction. Somewhere the there. CHAIRPERSON: That's where the pointer the is. Starting with the point in the middle of the neidle. I the start the velocence. that longish line of whicks which i referred to earlier, the halt indigities that he moved diagonality upwarks to the the shootings to the middle. That's where the pointer the shootings or did you move anywhere we care carry on. MR CHASKALSON SC: No, you've marked the hysion started shooting? MR CHASKALSON SC: No, you've marked the barbod with the shootings or did you say in that barbot welf welf. That's where you was you as whe strikers trying to first earliers wave, did you tay in the point in the shootings or did you was you as where start are here and the shootings or did you wave as you as where start are here and the shootings or did you wave as you as where wave and the shootings or did you wave as you as where start are here and the pointer the individe the hare negatiliter byside and then pointer the individe the pointer.	2	loggerheads about laying down arms." In other words the	1	MR NTSEBEZA SC: Mr Chair, just for my
4 results: Am 1 interpreting what you say correctly? 4 CHAIRPERSON: Where have you been Mr 5 COLONEL MODIBA: That's correct, 5 Ntsebeza. If you look at the side dpit, and Immediately blook 7 MR CHASKALSON SC: Well if we go back to 5 Ntsebeza. If you look at the side dpit, and Immediately blook 9 up your men if you thought that the operation was now going 10 in the photograph, with another 9 you area when you saw the miners running parallel to the 13 13 If Seffective four Mysias as and the mast. 12 barded wire Nyala? Sorry, on the photo, not on the map, 10 10 Immediately four Mysias as and the mast. 13 Forderwards that direction. To notth direction. Somewhere 10 Immediately in the point in the middle of that line. 14 indicates that memoded ligannyl works to the point in the middle. 11 12 11 12 15 chalkPERSON. That's where how you saw the strikers mover (los and the wing you were at the shooting. 11 12 11 16 forderwards that direction somewhere 10 11 12 11 12 11 17			2	
5 COLONEL MODIBA: That's correct, 5 Ntscheza, If you look at the slide, there is the mast 6 Chairperson. MR CHASKALSON SC: Well if we go back to 8 the photograph, you're explained where you would have lined 8 Its effectively four Hyala's close to each other in a line 9 up your men if you thought that the operation was now going 10 and further to the left. The negotiating Myala, as I 11 up wore when you saw the miners running parallel to the the bottom of the photograph, with another 10 and further to the left. The negotiating Myala, as I 12 barded wire Nyala? Sorry, on the photo, not no the map where' 11 understand the mast. 11 understand the mast. 13 cOLONEL MODIBA: I was still at that 14 pointer. That's more or less around the area of the mast. 14 pointer. That's more or less around the mast. 11 11 understand the mast. 15 CHAIRPERSON: That's where the pointer 16 was around the wast. 11 16 the nositin where you work to the fift. 11 11 understand the line on the maid. 11 17 CHAIRPERSON: That's where the pointer 16	3		3	
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7 MR CHASKALSON SC: Well if we go back to 7 the mast as one looks at the photograph, with ere are - well 8 the photograph, you've explained where you would have lined 8 the effectively four hygals close to each other in a line 9 up your meth four hough that the operation was now going 9 parallel with the bottom of the photograph, with another 10 to commence. Can you mark the position on the map where 10 one further to the left. The negotiating Nyala, as 1 11 users when you saw the miners running parallel to the the the hardsd wire Nyala? Sorry, on the photo, nor the map. 12 barbed wire Nyala? Sorry, on the photo, nor the map. 10 one further to the left. The negotiating Nyala, as 1 13 understand the cach of the mast. 14 pointer. That's more or less around the area of the mast. 14 pointer. That's more or beliow the mast as 1 thought. 14 pointer. That's more or beliow the mast. 11 15 CHAIRPERSON: That's where new of TH welicles. 11 14 bottom the social full. 14 16 that nositia in the middle of that line. 16 was wrong. 15 CHAIRPERSON: Cach did you more anywhere 16 right, midway between the neopoining or did you more anywh	5	COLONEL MODIBA: That's correct,	5	-
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9 up your men if you thought that the operation was now going to commence. Can you mark the position on the map where you were when you saw the miners running parallel to the barbed wire Nyala? Sorry, on the photo, not on the map. COLONEL MODIBA: I was still at that spot. Chargerson. Nol far from my group. I was moving towards that direction. To north direction. Somewhere there. 10 one further to the left. The negotiating Nyala, as 1 17 COLONEL MODIBA: I was still at that spot. Chargerson. Nol far from my group. I was moving towards that direction. To north direction. Somewhere there. 11 MR Chaskalson has kindly pointed i out with his own upper some and the mast. I think is. Starting with the point in the middle of that line, that longish line of vehicles which I referred to earlier, right, midway between the negotiation Nyala and the Nyalas on either side of it and the line below of TRT vehicles. 11 12.471 Now that we've got M Nisebeza onboard as well, we carry on. 10 one ither side of it and the line below of TRT vehicles. 11 12.471 Now that we've got M Nisebeza onboard as well, we carry on. 11 else? 12.471 Now that we've got M Nisebeza onboard as well, wo as you saw the strikers move, did you move anywhere 12 12 else? 13 Say exercise, It was very quick. The - 12 else? 1 Say exercise, It was very quick. The - 13 colonel L MODIBA: If 1 got It well you saw other developments? 1 Say exercise, I	7	5	7	
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1	Page 30546 take in the direction of koppie 1?	1	Page 30548 COLONEL MODIBA: Yes, I can confirm that
2	COLONEL MODIBA: Affirmative,	2	as well.
3	Chairperson.	3	MR CHASKALSON SC: And the time of that
4	MR CHASKALSON SC: Colonel, we did some	4	photo is 16:01:43 eTV time. Now on the FLIR camera, which
5	rough measurements on Google Maps. One can measure the	5	is the long-range CCTV camera, we can see that your line is
6	intersection of these two, not really, the sort of paths	6	first seated and then it stands up at 16:08:11 on the FLIR
7	which cross the group of your men. We can measure that	7	camera, which is 16:02:49, and it moves off, it starts
8	point and the point from that intersection to the mouth of	8	actually moving forward towards koppie 2 and ultimately
9	the kraal is approximately 65 metres. Would that square	9	koppie 3 at 16:08:49 on the FLIR camera, which is 16:03:27
10	with your recollection?	10	- 16:03:27 eTV time. Again I don't want to take you to
11	COLONEL MODIBA: As I made an estimate,	11	those shots because it will waste a lot of, or we'll spend
12	Chairperson, I said between 80 to 100. It's just a layman	12	a lot of time –
13	estimation, the distance.	13	CHAIRPERSON: Mr Chaskalson, you say
14	MR CHASKALSON SC: Well, I just want to	14	seated. According to his evidence they were kneeling and
15	put it to you, we've done that exercise. Maybe the SAPS	15	standing, so –
16	team can look at it as well. If they've got a query on it	16	MR CHASKALSON SC: Kneeling.
17	we can sort it out among ourselves. The next photograph	17	CHAIRPERSON: So the kneeling is probably
18	that I want us to look at is KKK16.5110, which is 20	18	what you mean by that.
19	seconds later, and one can see what has happened here is	19	MR CHASKALSON SC: Kneeling, or sort of,
20	that your group is starting to form into a basic line. If	20	it looks in fact that they are on one knee, sort of one
21	we can zoom into the top left-hand corner of the screen,	21	foot up, one knee and then stand up. If I can give the
22	and so the group is starting to move from the sort of bunch	22	references, again I would ask SAPS to query them if they
23	that we saw in the previous photograph into what will look	23	have difficulties, but just to get the timeline, it's CC38,
24	like a line. Can you confirm again that that is your	24	which is the FLIR camera, 16:08:11 on that camera, which is
25	group, your members?	25	16:02:49, one can see the line seated, or kneeling, and
	Dago 20547		Dogo 20540
1	Page 30547 COLONEL MODIBA: Ja, that's the time when	1	Page 30549 16:08:49, which is eTV 16:03:27, one can see them standing
2	they were preparing to move towards koppie 1 through that	2	up and starting to move forward, and what one also sees on
		~	up and starting to move forward, and what one also sees on
3	Nyala at the bottom.	3	the FLIR camera, at 16:03:33 eTV time, which is 16:08:55,
3 4	Nyala at the bottom. MR CHASKALSON SC: We'll get to that on		
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4	MR CHASKALSON SC: We'll get to that on	3 4	the FLIR camera, at 16:03:33 eTV time, which is 16:08:55, is that the second water cannon, the North West water
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· · · · ·		1	
1	Page 30550	1	Page 30552
1	CHAIRPERSON: Mr Chaskalson, when you've	1	there were fatalities.
2	reached a suitable stage let me know, we can take the lunch	2	MR CHASKALSON SC: Could you see bodies?
3	adjournment. If you're busy with a point I think you're	3	COLONEL MODIBA: Yes, I saw bodies.
4	busy with, you've nearly made the point, but when it's	4	MR CHASKALSON SC: I want to take you to
5	convenient for you let me know.	5	something that you said in your statement of the 25th of
6	MR CHASKALSON SC: I have reached the end	6	August which is ZZZ2.2. Can we go to paragraph 6?
7	of this section of the cross-examination, so it would be a	7	"Thereafter the armed warriors ran around the barbed wire
8	convenient time.	8	in mob formation, wielding pangas, spears, assegais, axes
9	CHAIRPERSON: We'll take the lunch	9	and knobkerries while charging at the outlines of
10	adjournment. It's quarter to 2.	10	formation. In the process there was a sound of gunshot
11	[COMMISSION ADJOURNS COMMISSION RESUMES]	11	from the charging mob and both first and second rows
12	[13:49] CHAIRPERSON: The Commission resumes.	12	responded by firing at the aggressive, hostile mob with an
13	Colonel, you're still under oath.	13	effort to cut them down." What did you mean by an effort
14	MR CHASKALSON SC: All right, Colonel,	14	to cut them down?
15	I'm afraid we've moved, we're finished with the	15	COLONEL MODIBA: In that paragraph my
16	clarificatory questions. Now for the questions where I	16	take is that as these armed strikers were charging at the
17	have some concerns and if we can go back to the scene 1	17	police then the police responded by firing towards their
18	shootings. Did you yourself see the shootings?	18	direction which I could think it was stopping them not to
19	COLONEL MODIBA: Yes I did see the	19 20	come closer to them or hurt them. MR CHASKALSON SC: Did you see what had
20 21	shooting, Chairperson. MR CHASKALSON SC: And you heard that	20	5
	5	21 22	taken place there as a deliberate attempt to kill strikers?
22 23	eight second volley of five gunshots? COLONEL MODIBA: I heard a gunshot, I	22	COLONEL MODIBA: No, that I cannot say
23 24	can't say it was eight seconds.	23 24	that it was a deliberate attack on the strikers. MR CHASKALSON SC: But the words that you
24 25	MR CHASKALSON SC: We've measured it on	24 25	used were "an effort to cut them down." What do you mean
20		25	used were an enorrito cut them down. What do you mean
	Page 30551		Page 30553
1	the television footage and there is a sustained burst of	1	by cutting someone down?
2	gunfire for eight seconds. There are some debates as to	2	COLONEL MODIBA: What I basically mean is
3	whether one can identify individual shots later but the	3	stopping that the person who was charging to stopping him.
4	volley lasts eight seconds. Have you ever heard a volley	4	I can stop you by firing in front of you. That can make a
5	of gunfire like that before in an operation?	5	person who is charging to retreat, that is what I meant.
6	COLONEL MODIBA: It was the first time	6	MR CHASKALSON SC: But that's not what
7	that I get involved in such a situation where the shooting	7	and the manufacture management is 140
8			cut them down means is it?
	erupted.	8	COLONEL MODIBA: No that's according to
9	MR CHASKALSON SC: Were you aware that	8 9	COLONEL MODIBA: No that's according to how I put it there, my explanation.
9 10	•	_	COLONEL MODIBA: No that's according to how I put it there, my explanation. MR CHASKALSON SC: So when you say you
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	Page 30554 MR CHASKALSON SC: Have you used this	1	Page 30556 MR CHASKALSON SC: Well you couldn't have
2	phrase "cut them down" before or again? Is this the first	2	stopped it yourself but as one of the commanders in the
3	you've used this phrase to the best of your recollection?	3	field did it not occur to you that you should really
4	COLONEL MODIBA: Those were the words I	4	contact the JOC or the operational commander to suggest
5	used, I cannot say I used them before but those words that	5	that this operation should not proceed? A tragedy had just
6	are contained in the paragraph that's the meaning behind	6	taken place?
7	that not to cut as to cut a thing but prevent that movement	7	COLONEL MODIBA: Chairperson, that did
8	of the miners that were coming, that were charging at the	8	not come to my mind.
9	police.	9	MR CHASKALSON SC: So you thought that
10	MR CHASKALSON SC: You saw bodies at	10	you were just going to carry on with your task in terms of
11	scene 1, how many bodies did you see? Just an estimate.	11	the briefing irrespective of what had happened at the
12	COLONEL MODIBA: As I alluded earlier	12	kraal?
13	that the action was very quick, I can just estimate five,	13	COLONEL MODIBA: According to me,
14	six up, not more than ten. That's when I turned back.	14	Chairperson, there was nothing wrong of us or National
15	MR CHASKALSON SC: Was it not clear to	15	Intervention to still continue shipping koppie 1 as
16	you that there were going to be a large number of injuries	16	directed because there could still be firearms or dangerous
17	at scene 1 and probably some fatalities as well?	17	weapons that we could seize from that point, koppie 1.
18	COLONEL MODIBA: Come again with your	18	MR CHASKALSON SC: You had 96 members
19	question.	19	under your command at scene 1, is that correct?
20	MR CHASKALSON SC: Was it not clear to	20	COLONEL MODIBA: That's correct,
21	you that there was going to be a large number of very	21	Chairperson.
22	serious injuries at scene 1 and probably some fatalities as	22	MR CHASKALSON SC: Now we've been told
23	well from that shooting?	23	that all NIU members receive first aid training to level 3.
24	COLONEL MODIBA: Yes, there was a	24	Is that correct?
25	possibility that there could be fatalities as I saw bodies	25	COLONEL MODIBA: Some of them yes,
1	Page 30555 falling, then immediately I turned around and I directed	1	Page 30557 Chairperson, but not all of us.
2	NIU members to proceed to koppie 1. So I didn't went	2	MR CHASKALSON SC: We were given a
3	further to establish as to how many bodies were there.	-	0
		3	training manual which had the NIU training in it and maybe
4	5	3 4	training manual which had the NIU training in it and maybe if we can just look at slide 79 of exhibit Q, 79 of exhibit
	MR CHASKALSON SC: Why did you direct the	4	if we can just look at slide 79 of exhibit Q, 79 of exhibit
4 5 6	MR CHASKALSON SC: Why did you direct the NIU members to proceed to koppie 1 without establishing how		if we can just look at slide 79 of exhibit Q, 79 of exhibit Q. Now maybe if we go back to 69 which makes clear that
5	MR CHASKALSON SC: Why did you direct the	4 5	if we can just look at slide 79 of exhibit Q, 79 of exhibit Q. Now maybe if we go back to 69 which makes clear that this is the chapter of training for NIU. And just scroll
5 6	MR CHASKALSON SC: Why did you direct the NIU members to proceed to koppie 1 without establishing how many bodies there were?	4 5 6	if we can just look at slide 79 of exhibit Q, 79 of exhibit Q. Now maybe if we go back to 69 which makes clear that
5 6 7	MR CHASKALSON SC: Why did you direct the NIU members to proceed to koppie 1 without establishing how many bodies there were? COLONEL MODIBA: Chairperson, the	4 5 6 7	if we can just look at slide 79 of exhibit Q, 79 of exhibit Q. Now maybe if we go back to 69 which makes clear that this is the chapter of training for NIU. And just scroll quickly down to 79 so that we can see that nothing else
5 6 7 8	MR CHASKALSON SC: Why did you direct the NIU members to proceed to koppie 1 without establishing how many bodies there were? COLONEL MODIBA: Chairperson, the shooting involved TRT which I believed they had their	4 5 6 7 8	if we can just look at slide 79 of exhibit Q, 79 of exhibit Q. Now maybe if we go back to 69 which makes clear that this is the chapter of training for NIU. And just scroll quickly down to 79 so that we can see that nothing else comes in between. Sorry if we can just go back to that,
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Page 305581COLONEL MODIBA:That's correct.1COLONEL MODIBA:If I f2MR CHASKALSON SC:Map reading.2the bleeding it's a known thing that th3COLONEL MODIBA:Correct.3be stopped by bandaging the area that4MR CHASKALSON SC:Global positioning4is my understanding by to go into deta5system, GPS.5further do this and that to save the life6COLONEL MODIBA:That's correct.6because I'm not a medic.7MR CHASKALSON SC:First aid level 3.7COMMISSIONER HEMRAJ:8COLONEL MODIBA:There if I'm allowed to8include learning to diagnose what the	•
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7 MR CHASKALSON SC: First aid level 3. 7 COMMISSIONER HEMRAJ:	
	Does level 3
5	problem is?
9 elaborate on that I would be pleased to do that. 9 COLONEL MODIBA: I'm r	not familiar with
10 MR CHASKALSON SC: Please do. 10 that type of course, the level 3, I'm no	t familiar with
11 COLONEL MODIBA: There it's just a basic 11 that one if I have to put it clear. That	
12 that you get but if during the operation you're a team 12 what I know, the lessons that we rece	
13 member what is it that you can do. That's just a basic. 13 of rural phase is just a basic first aid the	•
14 CHAIRPERSON: What does level 3 mean? 14 ourself in case there are casualties.	
15 COLONEL MODIBA: I guess the level of 15 COMMISSIONER HEMRAJ:	And in the case of
16 that first aid. 16 excessive bleeding have you been tau	ght how to apply a
17 CHAIRPERSON: It's not level 1 or level 17 tourniquet to stop the bleeding?	
18 2, it's level 3. 18 COLONEL MODIBA: Yes,	that I can recall
19 COLONEL MODIBA: Chairperson, I'm not a 19 that to stop the excessive bleeding you	u tie the area that
20 medic, that is my understanding but then my indication here 20 is bleeding. That they call you arrest	the blood.
21 is that is part of the lesson we get, however, I want to 21 COMMISSIONER HEMRAJ:	Thank you.
22 point out that that's just a basic knowing whether that if 22 CHAIRPERSON: Did you	pass the test, did
23 your body get hurt this is what you can do. It's not 23 you pass the course?	
24 something that I can use to save life like a medic. 24 COLONEL MODIBA: Yes,	Chairperson.
25 MR CHASKALSON SC: Is it – I'm just 25 CHAIRPERSON: You did	pass the test, you
Page 30559	Page 30561
1 curious about what level of training it involves. Do you 1 said yes and if necessary we can get	
	•
2 get training on for instance – say your buddy gets shot and 2 first aid, the syllabus of levels 1 and 2	•
2get training on for instance – say your buddy gets shot and 32first aid, the syllabus of levels 1 and 23he's bleeding heavily from the arm or from the leg would3want.	2 as well if we
2get training on for instance – say your buddy gets shot and 3 he's bleeding heavily from the arm or from the leg would 4 you know what to do?2first aid, the syllabus of levels 1 and 23want.3want.4COLONEL MODIBA:Char	2 as well if we hirperson, let me get
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2get training on for instance – say your buddy gets shot and 3 he's bleeding heavily from the arm or from the leg would 4 you know what to do?2first aid, the syllabus of levels 1 and 23want.3want.4COLONEL MODIBA: 5COLONEL MODIBA: 6Yes, Chairperson, in 65it, you're talking about the overall con 66that regard my understanding I have to arrest the blood, in6CHAIRPERSON: 	2 as well if we hirperson, let me get urse. only interested in
2get training on for instance – say your buddy gets shot and he's bleeding heavily from the arm or from the leg would you know what to do?2first aid, the syllabus of levels 1 and 24you know what to do?3want.5COLONEL MODIBA: that regard my understanding I have to arrest the blood, in other words to stop the bleeding to be excessive.4COLONEL MODIBA: the first aid you see. the first aid you see.	2 as well if we hirperson, let me get urse. only interested in , level 3 but what
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1	Page 30562	1	Page 30564
1	MR CHASKALSON SC: Before I asked them to	1	SAPS. This could be one of those policy document. I'm not
2	put it in your file, had you seen it before?	2	disputing that one, but I cannot now at this stage point
3	COLONEL MODIBA: No, I cannot say I saw	3	out to say SAPS did not make this document available for
4	it before.	4	me, but it's put, it's a possibility that they could be in
5	MR CHASKALSON SC: As a commander of a	5	the documents that are filed at my unit.
6	unit, what are your responsibilities in terms of being	6	MR CHASKALSON SC: But as a matter of
7	aware of official SAPS policies?	7	course ordinarily if policy documents are to be distributed
8	COLONEL MODIBA: As far as possible I	8	through SAPS in your unit you would expect to receive a
9	need to understand the policies of the SAPS, and plus this	9	policy document so that you can implement it to the people
10	policy 2 of 2007, when I look at that purpose, it's	10	underneath you. Is that how you would expect the practice
11	something that I need to know what to do when I get to a	11	to work?
12	scene, what steps, procedures that I need to follow, how to	12	COLONEL MODIBA: That's correct,
13	handle the scene.	13	Chairperson.
14	MR CHASKALSON SC: No, that is what the	14	MR CHASKALSON SC: Can we –
15	policy instructs you on, but I'm curious about the internal	15	COMMISSIONER HEMRAJ: Sorry, so it's not
16	systems at SAPS. You're a colonel, you're a commander of a	16	as though a document like this would only go to the
17	specialist unit. Do these policies not get sent to you as	17	detectives who might attend crime scenes and know how to
18	a matter of course for you to read up and implement?	18	manage them; they would come to all the other units
19	COLONEL MODIBA: The way it stands is not	19	regardless of their functions?
20	something that I would say is new when coming to the	20	COLONEL MODIBA: That's correct. It gets
21	management of the scene.	21	circulated to all the components, regardless whether it's
22	MR CHASKALSON SC: Colonel, we'll get to	22	in line with that particular component.
23	the details of what's inside there in a minute, but I'm	23	MR CHASKALSON SC: But in the nature of
24	interested now in really in internal systems of SAPS. You	24	your work you are frequently present on crime scenes, are
25	say you're not sure you saw this document before it got put	25	you not? Your unit.
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1	Page 30563 in the file in front of you. Are you clear on that?	1	Page 30565 COLONEL MODIBA: Can you rephrase the
1	in the file in front of you. Are you clear on that?	1	COLONEL MODIBA: Can you rephrase the
1 2 3	in the file in front of you. Are you clear on that? COLONEL MODIBA: Ja, as we are having a	2	COLONEL MODIBA: Can you rephrase the question?
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1	Page 30566 Were you aware of this aspect of the SAPS policy?	1	Page 30568 there was this, the appropriate equipments.
2	COLONEL MODIBA: This cannot,	2	MR CHASKALSON SC: Did you make any
3	Chairperson, surprise me when a police member get to the	3	enquiries as to whether any of the SAPS vehicles at the
4	scene where there are injured people, you still need to do	4	scene had first-aid kits in them?
5	the necessary arrangements to get the necessary aids to	5	COLONEL MODIBA: No, I did not make
6	come and assist.	6	enquiries, Chairperson.
7	MR CHASKALSON SC: Well, I'll follow up	7	MR CHASKALSON SC: Can I ask you,
8	that answer in a minute, but I do want you to answer the	, 8	Colonel, if events at scene 1 had turned out differently
9	question that I initially asked, which is were you aware of	9	and if it hadn't just been strikers who were shot at scene
10	this aspect of SAPS policy, or were you aware that it was	10	1 but actually some SAPS members had been shot at scene 1
11	SAPS policy that the first member at a crime scene must	11	and were lying wounded and bleeding at the scene, would you
12	assist the injured within the limitations of his or her	12	not have yourself or with some of your trained personnel
13	training as a matter of priority?	13	sought to assist those wounded SAPS personnel as a matter
14	COLONEL MODIBA: This to me, Chairperson,	14	of priority?
14	is the same as you get to the collision scene where there	14	COLONEL MODIBA: Yes, at that stage the
16	are injuries that you still need to assist and get the	16	assistance, whether it's SAPS or member of the public, they
17	necessary aids to take over to assist further the injured.	17	still need, efforts still need to be made to summon the
18	It's not a surprise. It's just a normal thing that as a	18	medical team to attend to the injured.
19	member of the SAPS you need to establish, ascertain the	19	MR CHASKALSON SC: Absolutely, and that I
20	nature of the injuries and to render some assistance.	20	don't hold you responsible for at all, suggest that you
20	MR CHASKALSON SC: They are two separate	20	carry any responsibility for that omission. There are
22	issues, really. I mean you and I can agree that it makes a	22	other people who need to answer that, but there is a period
23	lot of sense, but were you aware that this was SAPS policy	23	before the medics arrive and in that period did you not
24	as well, as well as making sense? Were you aware that SAPS	24	recognise that it was your duty to try to assist the
25	said that as a matter of priority this is what the first	25	injured within the limitations of your training as a matter
		20	
	Page 30567		Page 30569
1	member at a crime scene must do?	1	of priority?
1 2	member at a crime scene must do? COLONEL MODIBA: Chairperson, as I said	1 2	of priority? COLONEL MODIBA: As I said, I was not in
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	Page 30570		Page 30572
1	deny that, Chairperson.	1	MR CHASKALSON SC: Indeed, gunshots from
2	MR CHASKALSON SC: Colonel, I have to put	2	a southerly direction from 4 and 5, from G4 or 5.
3	this to you and it's that the medical evidence suggests	3	COLONEL MODIBA: Chairperson, I said
4	strongly that if basic first-aid had been applied promptly	4	there were, there were gunshots from the southern side and
5	at scene 1, at least one victim – I don't want to put it	5	also there were zipping of bullets that were flying all
6	higher than that – at least one victim, Mr Mdze, would	6	over from inside the koppie towards our direction.
7	probably have survived. Now is there anything that you	7	MR CHASKALSON SC: Now Colonel, can I ask
8	want to say to the Commission in relation to your failure	8	you, did you hear these gunshots before any of your members
9	either to investigate whether there was a need for first-	9	opened fire? Let's take them separately because the answer
10	aid at scene 1 or to deploy some of your members to do that	10	may not be the same in respect of both. Did you hear the
11	investigation and to make that first-aid available in the	11	gunshots that you say were zipping from the koppie, from
12	context of the fact that one person it seems bled to death	12	the direction of the koppie and by that I understand, I'm
13	on the scene in circumstances where his death could have	13	sort of indicating row 3 with my pointer, gunshots coming
	been prevented by, or would probably have been prevented by		
14		14 15	from somewhere along row 3 in your direction from left to
15	basic first-aid?	15	right on this photograph, did you hear those gunshots
16	COLONEL MODIBA: I believe that beside	16	before any of your members opened fire?
17	the fact that I did not attend to the injured, JOC should	17	COLONEL MODIBA: It was first the
18	have known to say there were people, or miners that	18	gunshots that were heard on the southern side and direct
19	sustained injuries at that time. I believe so, that that	19	from the koppie, gunshots that we heard was at the time
20	message could have been relayed to them, even though I	20	when the striking miners were charging so you could hear
21	didn't do it myself.	21	the zip of the rounds that were flying over from the
22	MR CHASKALSON SC: Did you hear any	22	koppie.
23	reports of that nature on the radio that the JOC would have	23	MR CHASKALSON SC: So you say the first
24	heard?	24	shots that you heard were from the southern side and was
25	COLONEL MODIBA: There was always some	25	that before your confrontation with the charging striking
1	Page 30571 distortion in the radio, but 1 still believe that in those	1	Page 30573
1	distortion in the radio, but I still believe that in those	1	miners?
2	distortion in the radio, but I still believe that in those distortion could be that among other message that could not	2	miners? COLONEL MODIBA: That's correct,
2 3	distortion in the radio, but I still believe that in those distortion could be that among other message that could not transmit it clearly, could be one of those that the report,	2 3	miners? COLONEL MODIBA: That's correct, Chairperson.
2 3 4	distortion in the radio, but I still believe that in those distortion could be that among other message that could not transmit it clearly, could be one of those that the report, the feedback on the scene that was communicated to JOC.	2 3 4	miners? COLONEL MODIBA: That's correct, Chairperson. MR CHASKALSON SC: And none of your
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	Page 30574		Page 30576
1	advanced to the koppie, which Nkebe was more to the right.	1	COLONEL MODIBA: That's correct.
2	As I say, there were sections of – we maintained the line	2	CHAIRPERSON: Okay.
3	but the charging occurred to various directions.	3	MR CHASKALSON SC: Now when there was
4	MR CHASKALSON SC: I understand what	4	this confrontation between your line and the charging
5	you're saying. Can you maybe indicate on this map, you	5	strikers, some of your members fired shots, whether they
6	indicated your own position which, if I understood it, was	6	were warning shots or direct shots we don't need to concern
7	in block J3 when the charging was taking place - can you	7	ourselves with at this stage but there was some shooting.
8	indicate for us how long the NIU line stretched that was	8	My question now is, when that shooting took place was that
9	advancing in the direction of the koppie?	9	the furthest point away from the koppie where there was
10	COLONEL MODIBA: It stretched	10	shooting by the NIU? It's quite a complicated question so
11	horizontally towards koppie 3.	11	let me just put it to you again.
12	MR CHASKALSON SC: But where would it	12	CHAIRPERSON: - the first shots, is that
13	have started? Would it have started as high as J1 or even	13	right? -
14	higher or lower and how far down would it have gone?	14	MR CHASKALSON SC: They would be the
15	COLONEL MODIBA: Just below the red	15	first shots.
16	letters.	16	CHAIRPERSON: The first shots that were
17	MR CHASKALSON SC: The red letter J?	17	fired by what one can call your members, they were fired
18	COLONEL MODIBA: Just below, it was not	18	from the furthest position from the koppie of any of the
19	higher than those letters, it was in.	19	shots that your people fired, would that be correct?
20	MR CHASKALSON SC: Okay and how long did	20	COLONEL MODIBA: Ja, the furthest could
21	the line stretch past you to your left?	21	be J3, from the koppie.
22	COLONEL MODIBA: It stretched up to J4.	22	CHAIRPERSON: No, no, I don't think Mr
23	CHAIRPERSON: When you said horizontally,	23	Chaskalson is concerned with that. I take it your members
24	I take it you were referring to the positioning which you	24	fired at various distances from the koppie. There were the
25	stood and faced, in that sense it was horizontal to you but	25	final – I take it some shots were the nearest that they
	Page 30575		Page 30577
1	if, as we look on the slide here it was presumably	1	were to the koppie and others were further away and
2	if, as we look on the slide here it was presumably vertical?	2	were to the koppie and others were further away and eventually there were some that were the furthest away.
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	Page 30578		Page 30580
1	is proceeding with so that when it comes to us asking	1	that we found. So what I would like and why I'm asking –
2	questions we don't repeat questions that he has asked. All	2	and let me tell you what I think, I think that this
3	I wanted the witness to indicate here, Chair, is on this	3	confrontation that you're describing now was a shooting
4	slide, Mr Chaskalson –	4	incident that took place furthest away from the koppie
5	CHAIRPERSON: What did you want to	5	relative to all of the places where the NIU may have shot
6	indicate? I'm happy to hear what you want to indicate –	6	on the day. I don't think that any NIU shooting that took
7	MR NTSEBEZA SC: No, Chair, I'll recall	7	place on the day took place further from the koppie than
8	what – I'm sorry that I may have interrupted Mr Chaskalson.	8	this first confrontation with the miners that you describe.
9	CHAIRPERSON: Alright, Adv Hemraj wanted	9	If I'm right on that thought or that hypothesis, then when
10	to ask a question which may solve your problem.	10	we find the furthest cartridges away from the koppie we
11	COMMISSIONER HEMRAJ: Colonel, as your	11	will know that you were at least that far away from the
12	line approached the koppie and the miners, right, in the	12	koppie when this confrontation took place. So that's
13	way that you were positioned, some of you in that line-up	13	really what I want to establish. So I suppose the first
14	were closer to the miners than the others, is that right?	14	question is, is my hypothesis right? Was there any
15	Some of you would have been closer to the koppie and the	15	shooting from the NIU on the day that you're aware of that
16	bushes and others further up to the right on the line.	16	was further away from the koppie than that first
17	COLONEL MODIBA: Yes, Chairperson, I just	17	confrontation with the strikers?
18	want to elaborate on what I experienced when I was there.	18	COLONEL MODIBA: No, Chairperson.
19	That's where I started to –	19	MR CHASKALSON SC: So that first
20	CHAIRPERSON: There you point at J3.	20	confrontation was furthest from the koppie of all of the
21	COLONEL MODIBA: That is where I myself,	21	shooting incidents that involved the NIU on the day.
22	I started to fire shots into the ground when the striking	22	COLONEL MODIBA: Chairperson, I must
23	miners were charging at and then in that section there some	23	point out that as I was walking there in J3, Nkebe's line
24	members also fired warning shots.	24	was more to my right, it could be that they were charging
25	CHAIRPERSON: Then you showed members in	25	also from that side but which I cannot say yes, I saw, I
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1	Page 30579 J3 and in J4 and you said other members, people who were	1	Page 30581 concentrated there. My focus was –
1	J3 and in J4 and you said other members, people who were	1	concentrated there. My focus was -
2	J3 and in J4 and you said other members, people who were with you also fired warning shots as you had done in the	2	concentrated there. My focus was – CHAIRPERSON: That side you indicate I
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Marikana Commission of Inquiry

Pretoria

		1	
	Page 30582		Page 30584
1	would have been approaching from the direction at the	1	are already exhibits and you'll remember that item 18 fell
2	bottom of the page with your basic line and the basic line	2	away because they had the wrong ABL report. So effectively
3	according to your description a few moments ago would have	3	the first document which counts - the second page of this
4	stretched a little bit, but essentially it stretched from	4	bundle - from the third page onwards we have exhibit ZZZ5.
5	roughly where the writing on the left-hand side identifying	5	The cover sheet is headed "Final Report Marikana Mining
6	members starts, to where the writing on the right-hand side	6	Incident" and so on, and the next page you get the index.
7	identifying members ends –	7	That's page 1 as it's so marked, of the documents, and then
8	CHAIRPERSON: Well, to put it more	8	the report itself begins on page 2. It continues for some
9	simply, Mr Chaskalson, it ends at the beginning of the	9	distance down the bundle. It ends page 27 and thereafter
10	rectangle containing the words "annexure C" and it begins -	10	will be the annexures and we're busy with annexure C. Now
11	it ends there and it begins at the right-hand side of the	11	one of the questions we have to consider at some stage is
12	legend which is preceded by the expression "14:15"	12	the status of the document. As Mr Chaskalson has
13	referring to various cartridges and so on, that's where it	13	indicated, if necessary, they can get Mr Steyl and Dr
14	runs from. You indicated, I think, that the witness was	14	Naidoo to make affidavits confirming the accuracy of what's
15	somewhere below the area which is beneath BB21-BB41.	15	in their report.
16	COLONEL MODIBA: That's where I would	16	COMMISSIONER HEMRAJ: Yes, Chair.
17	place you according to your, where you placed yourself.	17	CHAIRPERSON: It may well be that the
18	What -	18	parties, when they've got a chance to go through it, will
19	CHAIRPERSON: No, let's just check, do	19	accept that it's correct, or they may have points - detail
20	you agree with that? Do you understand how the thing	20	they wish to raise. I think one must assume that the
21	works? It's different from what we saw earlier in MMM2	21	cross-examination has been put on a provisional basis and
22	because that had north at the top.	22	that is the evidence the evidence leaders are going to lead
23	COLONEL MODIBA: Okay.	23	if they have to, but in the hope that it won't be necessary
24	CHAIRPERSON: This has got north on the	24	for that. I think that answers your question.
25	right-hand side and the top would be west and the bottom is	25	COMMISSIONER HEMRAJ: It does, Chair,
20	right hand side and the top would be west and the bottom is	20	
	Page 30583		Page 30585
1	Page 30583 east and the south of course, it follows, is on the left	1	Page 30585 thank you.
1 2		1 2	=
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2	east and the south of course, it follows, is on the left but once you've adjusted for that, do you agree with what	2	thank you. CHAIRPERSON: Right. Mr Chaskalson
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	east and the south of course, it follows, is on the left but once you've adjusted for that, do you agree with what is here depicted? COLONEL MODIBA: Yes, Chairperson. MS BALOYI: Chairperson, without meaning to interrupt Mr Chaskalson's cross-examination, we see this document, it refers to Mr L Steyl and Dr Naidoo. We don't have any recollection of this statement or anything from them and this is the first time we see their names and anything prepared by them. Is it intended that they will, there's some of kind of statement to give some, to be presented properly before the commission as evidence. [14:48] CHAIRPERSON: Well Mr Chaskalson will answer that, I can't. MR CHASKALSON SC: Yes. I mean there is a report to which this is an annexure which is their report. We can - it's signed by both of them. I mean if needs be we can have a covering affidavit drawn up. CHAIRPERSON: If I understand this - this is an annexure as you can see - annexure C to the report. The report has already been given to you because it was one of the documents which were covered by the list of documents to be used by Mr Chaskalson in the cross-	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	thank you. CHAIRPERSON: Right. Mr Chaskalson please proceed. It was one of the documents which was part of the bundle which the witness saw before he gave evidence. That's correct, isn't it? COMMISSIONER HEMRAJ: Yes, this the witness has seen. I wasn't querying this document. CHAIRPERSON: No, no. Okay. So that's alright. So Mr Chaskalson please proceed. MR CHASKALSON SC: Colonel, if I can just explain how this document works. Captain Mohlaki of the LCRC plotted the position where certain cartridges were found, so I'm marking now where cartridges - I think it is in fact BB2 to 8 because B1 wasn't a spent cartridge, it was an unspent cartridge. BB2 to BB8 were found roughly in this direction where they're marked on this plan. BB21 to BB41 were found roughly in this area where they're marked on this plan, and BB9 to BB20 were found where they're marked on the plan there. The precise GPS co-ordinates for where these cartridges were found and distances have been calculated on the basis of those co-ordinates, but what this plan shows is which NIU members were shooting which cartridges on that were found there, because cartridges

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		1	
	Page 30586		Page 30588
1	fired by Constable Ngwaleni. Do you recall him being part	1	where body A is marked on annexure D. The three clusters
2	of your team? Well he was part of your team, that much we	2	of cartridges, BB1 to 8, BB21 to 41 and BB9 to 20 are these
3	can tell you, but do you recall his position relative to	3	three circles that I'm identifying now, and using the GPS
4	where you were?	4	co-ordinates that Captain Mohlaki fixed for those
5	COLONEL MODIBA: Chairperson I don't	5	cartridges, we can see that the closest distance from the
6	recall his position, however I can confirm that he was part	6	cartridges to body A was 41.9 metres. The exercise hasn't
7	of my team.	7	been done in relation to body B, we've done that exercise
8	MR CHASKALSON SC: If I can then just run	8	with GPS co-ordinates and we get just over 35 metres from
9	through these. 14.3 Constable Ngonyama. Two of the	9	the cluster BB9 to 20 through to body B. Now -
10	cartridges found between BB21 and BB128. Do you recall	10	CHAIRPERSON: Sorry, before you carry on
11	Constable Ngonyama.	11	Mr Chaskalson, can you tell us looking at exhibit D,
12	COLONEL MODIBA: I know him as a member	12	perhaps show us on the screen where you were. I take it
13	of National Intervention.	13	you follow this. It may not be easy for you to follow but
14	MR CHASKALSON SC: Constable Mabasa,	14	if you can't follow please say so, but you see where the
15	14.5?	15	rock is and you see where body A was and body B was which
16	COLONEL MODIBA: Yes, Chairperson, it's	16	you would have seen at the time. Can you tell us more or
17	the first time to hear about Mabasa.	17	less where you were here?
18	MR CHASKALSON SC: He was recorded as an	18	COLONEL MODIBA: Does the chairperson
19	NIU member on the day.	19	refer to the position when I discharged my firearm?
20	CHAIRPERSON: He may have come from	20	CHAIRPERSON: Yes, yes I would think so
21	Durban or Umtata, so -	21	yes. Perhaps you can tell us where you were - you know,
22	COLONEL MODIBA: It could be that he	22	when the people started charging at you. When the first
23	might be from Umtata or Durban but for Pretoria I don't	23	shots were fired, I take it. When the charge began. Now
24	know the person.	24	can you - I'm not sure whether you fired shots at that
25	CHAIRPERSON: You don't recognise the	25	stage or slightly later, but can you show us more or less
	Page 30587		Page 30589
1	Page 30587 name as being one of the members who fell directly under	1	Page 30589 where you were when the first shots were fired and as these
1 2		1 2	
	name as being one of the members who fell directly under		where you were when the first shots were fired and as these
2	name as being one of the members who fell directly under you, but of course you had other NIU people with you from	2	where you were when the first shots were fired and as these people were charging at you.
2 3	name as being one of the members who fell directly under you, but of course you had other NIU people with you from Durban and Umtata didn't you?	2 3	where you were when the first shots were fired and as these people were charging at you. COLONEL MODIBA: I'll talk about myself
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	name as being one of the members who fell directly under you, but of course you had other NIU people with you from Durban and Umtata didn't you? COLONEL MODIBA: That's correct, Chairperson. CHAIRPERSON: Alright, so anyway, we can follow that up at our leisure later. MR CHASKALSON SC: 14.7 is Constable Mandla. Do you recall Constable Mandla? COLONEL MODIBA: Yes I recall that name, Chairperson. MR CHASKALSON SC: 14.8 Constable Mogele? COLONEL MODIBA: I also recall that one, Chairperson. MR CHASKALSON SC: Lieutenant Ntebe we've already dealt with, 14.10. 14.15 Constable Spanyetso. COLONEL MODIBA: Yes, that one also I can recall. MR CHASKALSON SC: And 14.19 is Constable Nyatela. COLONEL MODIBA: He's also from National Intervention at Umtata. MR CHASKALSON SC: If we then go to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	where you were when the first shots were fired and as these people were charging at you. COLONEL MODIBA: I'll talk about myself when I first opened fire with my pistol. I was somewhere there. CHAIRPERSON: You were somewhere to the right as one looks at the photograph of BB21 to 41 is that correct? COLONEL MODIBA: That's correct, COLONEL MODIBA: That's correct, Chairperson. MR CHASKALSON SC: And according to your statement - CHAIRPERSON: Mr Chaskalson I'm sorry to interrupt you. It's now 3 o'clock. I was proposing to take the tea break round about now but obviously it - the time for tea break depends upon your convenience as the cross-examiner. So when you're ready to take the tea adjournment would you be kind enough to tell me because I won't be able to announce the tea adjournment unless you do so. MR CHASKALSON SC: Just one question and then it would make a sensible point to break. Colonel, your statement - I've got your first statement of 23, 25

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1	metres in that first statement, paragraph 7, ZZZ2.2. I	1	KAIZER NTLOU MOBIDA: s.u.o.
2	think in your 2013 statement, ZZZ4 you said 12 to 15 but	2	CHAIRPERSON: Mr Chaskalson.
3	we're talking somewhere between 12 and 15 metres is your	3	CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
4	estimate of how far away the strikers were from you when	4	Colonel, you were you say approximately 12, maybe 12 to 15
5	you fired your warning shot is that correct?	5	metres away from the people charging at you when you fired
6	COLONEL MODIBA: That's correct,	6	your warning shots. Was the roughly the same point at
7	Chairperson.	7	which others of your members opened fire as well?
8	CHAIRPERSON: May I ask you this. 12	8	COLONEL MODIBA: I cannot confirm that,
9	metres is an interesting estimate to make. May I enquire	9	Chairperson, if it was the same distance as compared to the
10	whether - before you made the statement you went back to	10	other members. I'm only alighting my distance between
11	the scene and paced out some of the distances? Refreshed	11	myself and the charging strikers.
12	your memory as it were by what you saw there. You made	12	MR CHASKALSON SC: Had anyone started
13	your statement on the 25th of August I think, and that was	13	firing before you fired your warning shots?
14	some nine days after the events that you were describing.	14	COLONEL MODIBA: Chairperson, I cannot
15	Did you perhaps go back to the scene just to refresh your	15	confirm that one as to that there was any firing before I
16	memory and perhaps pace out distances and try to be as	16	fired because there were shooting all over, so there were
17	accurate as you could.	17	gunshots from the south as well, so I cannot say yes, there
18	COLONEL MODIBA: The only time I went to	18	was a shooting before I fired my warning shot.
19	the scene for inspection-in-loco it was way after I	19	MR CHASKALSON SC: You see, Colonel, my
20	submitted my statement, Chairperson.	20	concern is in relation to the deaths of Mr Mdizeni and Mr
21	CHAIRPERSON: 12 was a genuine or just an	21	Thelejane because it appears to me from the expert evidence
22	estimate. Almost a guestimate one can say. It wasn't	22	that neither Mr Mdizeni nor Mr Thelejane could have been
23	based upon actual pacing out on the scene.	23	part of the group that charged at your line in the incident
24	COLONEL MODIBA: No, this was the	24	that you are describing, and let me take you slowly through
25	estimate between myself and the charging strikers.	25	the evidence in that regard.
	Page 30591		Page 30593
1	MR CHASKALSON SC: Do you play football?	1	If we can start with Mr Mdizeni, and Chairperson,
2	MR CHASKALSON SC:Do you play football?COLONEL MODIBA:I played football, yes.	2	If we can start with Mr Mdizeni, and Chairperson, at this point we may need warnings for this section of the
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	Page 30594		Page 30596
1	by a single R5 shot, if we can go to exhibit A, page 66, or	1	If that's the case, Colonel, it seems to me there
2	I don't know, this is just the – if we can go down to the	2	are one of two possibilities; either he was shot at the
3	bottom of this first page of the post – keep scrolling.	3	base of the rocks, the base of the big rock where his body
4	This is not the – there, yes, first page of the post	4	was found, back on JJJ29.205, or possibly he was shot and
5	mortem. If we look at paragraph 4, "A single penetrating	5	killed on top of the rock and fell down to that position,
6	bullet wound of pelvis perforated the pelvic cavity and	6	because if we see his position, if we go back to JJJ209 we
7	lacerated the right internal iliac artery and rectum,	7	can see that it is possible that this is the position into
8	fractured the L5 lumbar vertebrae" – that's part of the	8	which he, where he ended up, having rolled down the rocks
9	spine – "sacrum, and both pelvic bones and terminated in	9	at that point. Either way, Colonel, he would have been at
10	the muscles of the lateral aspect of the left hip." So the	10	least 40 metres away from the people who shot him, if he
11	bullet went in on his right hip and ended on the left hip,	11	was shot in the encounter that you describe, and he
12	doing a lot of damage in the process. "The bullet wound	12	wouldn't have been charging at them because he would have
13	and spent wound were consistent with high-velocity	13	been looking not in their direction, which would have been
14	firearm," and if we go down to page 69, paragraph 27, which	14	40 metres out the front of this photograph, but rather
15	talks about the spinal column, "There is a large furrowed	15	looking off to the right of this photograph so that the
16	bullet perforation of L5 lumbar vertebrae and upper part of	16	bullet entered his right hip and stuck in his left hip. He
17	sacrum with extensive bone shattering and extensive bone	17	would have been facing the right-hand side of this
18	fragmentation associated with extensive surrounding soft-	18	photograph. Are you able to cast any light on this? Did
19	tissue haemorrhages. See also paragraphs," then there's a	19	you see victim A being shot, Mr Mdizeni?
20	reference above, and the spinal cord refers above at 28 to	20	COLONEL MODIBA: Chairperson, I first
21	27.	21	want to mention that at the time we were in the face of the
22	What this means is translated for us by Dr Naidoo	22	rock, there was, Mr Mdizeni was not there when some
23	in ZZZ5, and if we can go to the main report in ZZZ5, pages	23	charging strikers were charging towards us, so I don't know
24	13 to 14, and if we can go to page 13 of ZZZ5 – I'm looking	24	as to whether it was later after the charging strikers went
25	at paginated page rather than PDF page. I'm not sure what	25	back into the bush behind the rocks, but in the beginning
	Page 30595		Page 30597
1	- ja, next page, bottom of the next page. There we go,	1	when I was facing that direction where his body is lying,
2	body A, that's Mr Mdizeni. "This deceased was found	2	there was no body there.
3	against the base of a large central boulder on its eastern	3	MR CHASKALSON SC: Are you talking about
4	side and had sustained a single high-velocity R5 bullet	4	before the confrontation with the charging strikers when
5	injury to his spine/pelvis/hip from right to left, having	5	his body wasn't there?
6	been most likely fired from the eastern side of the koppie,	6	COLONEL MODIBA: That's correct,
7	positions 1 or 2. See map annexures E to G. Thus it would	7	Chairperson.
8	appear that the deceased was facing towards the north when	8	MR CHASKALSON SC: Were you able to see
9	he was shot. The wound was severely incapacitating and	9	the rocks immediately after the confrontation with the
10	caused rapid, although not immediate, death and therefore	10	charging strikers?
11	the deceased would unlikely have been able to move his body	11	COLONEL MODIBA: That's correct,
12	location after the injury."	12	Chairperson.
13	Sorry, we've got to scroll over the page for the	13	MR CHASKALSON SC: And his body still
14		14	wasn't there?
	last passage that I read out. There are two points about		
	last passage that I read out. There are two points about this that I would emphasise. Colonel. The first is that	15	COLONEL MODIBA: I only saw the striking
15	this that I would emphasise, Colonel. The first is that	15 16	COLONEL MODIBA: I only saw the striking miners that were ordered behind the rocks by the police.
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15there was no body in front of the face of the rock that I15CHAIRPERSON:The warning	the warning
, , , , , , , , , , , , , , , , , , , ,	
16 could coo That's what I remember I only cow the 16 stands I didn't coo anybody loave actually	I'm sure still
16could see. That's what I remember. I only saw the16stands. I didn't see anybody leave actually	, but of course
17 charging strikers that came towards our line and at the 17 some people did come in after I gave the w	/arning, but I'm
18 time when we opened fire as to let them not come closer to 18 afraid there's nothing I can do about that.	But anyway the
19 us, they then ran back into the bush and the rocks around 19 fact is nobody left after I spoke and the pic	ture has been
20 there, and then immediately those that were hiding behind 20 up ever since, so I don't think another warr	ning is
21 the rocks were ordered to get out and lie there so that 21 required.	
22 they could be cleared. 22 COMMISSIONER HEMRAJ: Co	uld I just ask,
23 CHAIRPERSON: Yes, I understand, but you 23 before you move away from this slide, whe	n you saw this
24 haven't answered my question. I don't know if you can, but 24 deceased lying in that – is that the position	in which you
25 I'm just asking the question. You say that a number of the 25 saw him lying with the other persons who	vere on the
Page 30599	Page 30601
1 strikers were told to lie down there. That's correct, is 1 ground?	
2 it? That area we see on the photograph. Is that correct? 2 COLONEL MODIBA: Chairperso	
3 COLONEL MODIBA: That's correct, 3 difficult to confirm that position because at t	
4 Chairperson. 4 area was very volatile and the threat was to	0
5 CHAIRPERSON: Alright, now are you able 5 cannot precisely say he was in that position,	
6 to say whether this deceased striker was not already lying 6 that position. So it's just difficult for me now	v to
7 there, in other words must the body have got there later, 7 confirm that.	
8 or is it possible that he was already lying there at that 8 COMMISSIONER HEMRAJ: And	I the other
8or is it possible that he was already lying there at that8COMMISSIONER HEMRAJ:And9point where we see him at the time the other strikers were9persons that were lying there, had they been all they bee	I the other n arrested?
8or is it possible that he was already lying there at that8COMMISSIONER HEMRAJ:And9point where we see him at the time the other strikers were9persons that were lying there, had they bee10told to lie down on the rock near him?10Were their hands behind their backs with ca	I the other n arrested?
8or is it possible that he was already lying there at that8COMMISSIONER HEMRAJ:And9point where we see him at the time the other strikers were9persons that were lying there, had they bee10told to lie down on the rock near him?10Were their hands behind their backs with ca11COLONEL MODIBA:He could have been11	I the other n arrested? ble ties? Do
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8or is it possible that he was already lying there at that 98COMMISSIONER HEMRAJ:And 99point where we see him at the time the other strikers were 1010persons that were lying there, had they bee 1011COLONEL MODIBA:He could have been 1110Were their hands behind their backs with ca 1212amongst them, those that were ordered to lie next to that 1312COLONEL MODIBA:Yes, I rem 1313big rock, but that he was there before the shooting 1413they were ordered to gather behind the rock 14they were ordered to gather behind the rock 1415CHAIRPERSON:Would you necessarily have 1516that could be in their bodies, and at the sam 1716seen it? You see the reason I ask you the question is I 1716that could be in their bodies, and at the sam 1718amounts to the south, from your left, before you and your 19members fired the warning shots you did. Now is it 191910members fired the warning shots you did. Now is it 1219all the four persons that were there, includin deceased, who had their hands cable tied be 2122direction, from your left? In other words he may not even 2321COLONEL MODIBA: 1023have been one of the people who charged out and then went 2323there where the deceased is in that, on the of that big rock, those were the ones that I	I the other n arrested? ble ties? Do ember that as cs, I mean to my team was erous weapons he time there fed. es that include ng the ehind them? t were brought ground in front
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	Page 30602		Page 30604
1	hands also cable tied behind him at the time that you	1	physical control.
2	passed by there?	2	MR CHASKALSON SC: No, I asked you also
3	[15:35] COLONEL MODIBA: I cannot recall that,	3	whether you saw anyone being dragged down. Can I accept
4	Chairperson.	4	from what you tell us that you didn't see that?
5	COMMISSIONER HEMRAJ: Thank you.	5	COLONEL MODIBA: Yes, they were dragged
6	MR CHASKALSON SC: Maybe there are cable	6	behind the rocks.
7	ties on Mr Mdizeni's body. If we just zoom in we will see	7	COMMISSIONER HEMRAJ: They would have
8	them. Can - there's a cable tie in front of him there and	8	been searched in the process of putting them under control
9	another one, I think, on his back - on the back of his left	9	and arresting them, right? They would have been searched
		10	by the police.
10	leg and his hand - certainly his right hand is behind his	11	COLONEL MODIBA: What I see there is at
11	back in a position where it would have been if it had been	12	
12	cable tied.		the time they were taken behind the rocks they were brought
13	CHAIRPERSON: Did you see that at the	13	there so that they could be searched.
14	time? You presumably spent some time there in that	14	COMMISSIONER HEMRAJ: So they would have
15	vicinity when you saw the other people lying down having	15	been searched after they were put onto the ground with
16	been cable tied. Did you notice whether this particular -	16	their hands cable tied behind them.
17	it was already a body by that time. I assume he was	17	COLONEL MODIBA: Before - what could have
18	already dead. Had – there was a cable tie in there? You	18	happened is at the time when they were removed from behind
19	said you didn't see it I think. Did you see - you see	19	the rocks, they could have brought their under control with
20	there are these bits of cable ja, and there's this position	20	the instruction from either member saying lie down, at the
21	of the right hand behind the back. Did you notice that?	21	same time being cable tied and then searched.
22	COLONEL MODIBA: Chairperson, I cannot	22	COMMISSIONER HEMRAJ: And then searched
23	confirm that I saw him being cable tied but I know for a	23	after that?
24	fact that there were bodies that were lying next to him,	24	COLONEL MODIBA: That's correct.
25	around him, that were cable tied. It could be possible	25	COMMISSIONER HEMRAJ: So their positions
1	Page 30603	1	Page 30605
1	that he was cable tied just to remember, Chairperson, that	1	would have been moved by the police in the searching
2	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those	2	would have been moved by the police in the searching process.
	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those striking miners that were deemed to be dangerous. So that	2 3	would have been moved by the police in the searching process. COLONEL MODIBA: That's correct,
2 3 4	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those striking miners that were deemed to be dangerous. So that was not something wrong that maybe you find a person was	2 3 4	would have been moved by the police in the searching process. COLONEL MODIBA: That's correct, Chairperson.
2 3 4 5	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those striking miners that were deemed to be dangerous. So that was not something wrong that maybe you find a person was cable tied while he was no more but then at that time no-	2 3 4 5	would have been moved by the police in the searching process. COLONEL MODIBA: That's correct, Chairperson. COMMISSIONER HEMRAJ: Thank you.
2 3 4 5 6	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those striking miners that were deemed to be dangerous. So that was not something wrong that maybe you find a person was cable tied while he was no more but then at that time no- one could really knew, so there's a possibility that he	2 3 4 5 6	would have been moved by the police in the searching process. COLONEL MODIBA: That's correct, Chairperson. COMMISSIONER HEMRAJ: Thank you. MR CHASKALSON SC: But, Colonel, I want
2 3 4 5 6 7	that he was cable tied just to remember, Chairperson, that the cable tying was the process of controlling those striking miners that were deemed to be dangerous. So that was not something wrong that maybe you find a person was cable tied while he was no more but then at that time no- one could really knew, so there's a possibility that he might have been cable tied too.	2 3 4 5 6 7	would have been moved by the police in the searching process. COLONEL MODIBA: That's correct, Chairperson. COMMISSIONER HEMRAJ: Thank you. MR CHASKALSON SC: But, Colonel, I want to go back to something I asked you a few minutes ago.
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2 Eig rock there, and then on the other side y there's a 3 MMM22 You see there are photographs which show mine 4 workers 's may not be this one -but we have photographs 5 which show NUL members studuing mine workers inside the big trock seen from the other side? Do you 6 CHAIRPERSON: -H31 think. 7 G3. that area, but in the open field. -H31 think. 8 CHAIRPERSON: -H31 think. 9 photographs to be called out, ff w cang to KKIG. 5137 10 goes as far as H3. Maybe II can ask for one of lines 11 poole subuling miners in the open field. 12 order All REERSON: Can you perhaps describe 13 CHAIRPERSON: Can you perhaps describe 14 perspective of where the kapple is. 15 CHAIRPERSON: Can you perhaps describe 16 work not lines, and who the other aid took at this exhibit where precisely 17 to read the record and took at this exhibit where precisely 18 work not lines, and who what look line a line of -1 take II 20 work not habeling that book and tho bok withat 21	-	•	4	•
3 MiNU22 You see there are photographs which show mile workers inde the workers - it may not be this one - but we have photographs which show NU members subding mine workers inde the following at the parks about the there side? Do you undestand what I mean? Let me show you. Is that the big rack seen from the other side? Would the deceased be character and the there side? Do you for any not seen field. 4 9 G2, that are, but in the open field. 5 that the big rack seen from the other side? Would the deceased be character and not sure if it is photograph, by the rack or an i not source if that is photograph, by the rack what is early and it we are that I manning now. You and you photograph so be called up. If we can the NIU 7 COLONEL MODIBA: I'm not sure if it is cabibility what years and the set whore you and to the side? 10 cost and rack or and on the beach and those whose going? 10 COLONEL MODIBA: I'm not sure if that is cabibility where precisely it in more same that I manning now. You are cored and boat at this exhibitil where precisely it nor chart where see there in the middle of the paticularity for the bench and those whose going? 10 COLONEL MODIBA: I'm not sure if it manning where the core and that immediately below the manney set the paticularity for the bench and those whose you are core and to be at the excellation where parallel with were precisely it now the rack and where you and that itme infinition? 10 CHARPERSON: What I see in the cambro of the paticularity to the page about halfway - just over halfway is a dort the page about halfway - just over halfway is a dort the page about halfway - just over halfway is a dort the nock manney conore is in the ca				
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5 which show NU members sudduing mow which is G2 5 that the big rock seen from the other side? Do you 6 blocks, sort of G2 - an area in marking now which is G2 G3, that area, buil in the open field. 5 that the big rock seen from the other side? Would the deceased be 7 G3, that area, buil in the open field. 7 rock seen from our view, looking at hils pholograph, by the 9 MR CHASKLSON SC: That sure if that is 8 obscured from our view, looking at hil? 10 geos as far as H3. Maybe if 1 can ask for one of those 10 COLONEL MODIA: I'm not sure if that is 11 pholographs to be called up. If we can that I'm marking now. You 10 COLONEL MODIA: I'm not sure if that is 12 and I'we care that I'm marking now. You 10 CRAIRPERSON: Coll we should just zoom back out so he can get a full 14 perspective of where the kappie is. I'm core to which I was referring against the background of 15 with more particularly for the bench and those who's gain 10 some of the surrounding fastures. Are you now able to 14 members is a, well I suppose it's a clearing a lited. 10 i the photograph is that the now see that is 15 thet nothey side? 14 <t< td=""><td></td><td></td><th></th><td></td></t<>				
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		1	
1	Page 30610 evidence in relation to him - go to exhibit A page 41 of	1	Page 30612 [15:54] COLONEL MODIBA: I do, Chairperson.
2	the PDF I think it is. Sorry, you've got the paginated PDF	2	MR CHASKALSON SC: Now if I understood
3	for Mr Thelejane. On page 1 down to paragraph 4, "the	3	you correctly you said that you only saw body B for the
4	chief post mortem findings made by me on this body were two	4	first time when you came back after having gone round this
5	bullet wounds of the head and pelvis. The bullet wound of	5	route. Did I understand you correctly? You only saw the
6	the head perforates the head on the right side and back of	6	body of Mr Thelejane when you came back, not when you first
7	head, entering on the right temple just above the ear and	7	approached the koppie and turned right round, right along
8	exiting on the left back of the head. The pelvic bullet	8	the face of the big rock?
9	wound penetrates the anterior bones of the pelvis entering	9	COLONEL MODIBA: Chairperson, it's true
10	on the lateral aspect of right buttock terminating with	10	that I noticed body B after I made a second turn to that
11	bullet fragmentation within soft tissues around the urinary	11	big rock.
12	blood and bones of pelvic rami." If we go to Dr Naidoo's	12	MR CHASKALSON SC: You see it seems to me
13	report here, ZZZ5 at page 15, he gives his assessment.	13	that Mr Thelejane, if Mr Thelejane's body was there the
14	"This deceased was found adjacent to the edge of the large	14	first time you came round, it would be very difficult for
15	central boulder on its eastern side, about 20 to 30 metres	15	you not to see it because you would have literally walked
16	away from body A with a high velocity R5 bullet wound of	16	right past it. If you go, Mr Thelejane's body is roughly,
17	the head from right to left side, and another from the	17	probably on a line between F and G just into road, just
18	pelvis from right to left side. He was also thus facing	18	above the bottom of road 2. Now that would have been the
19	north when shot. The injuries were together both severely	19	route that you walked when you first came into the koppie
20	incapacitating and rapid fatal, though not immediate, and	20	and went right along the face of the big rock, along the
21	likely immediately incapable of any movement. Four images	21	bottom of the big rock. So if it was there it would be
22	captured in the attached photo album do not suggest body	22	very difficult for you not to see it, not to have seen it.
23	movement after death for body B." Again, two very similar	23	COLONEL MODIBA: If I remember well,
24	points I'd emphasised. He wasn't facing the person or	24	Chairperson, as I walked there, there were also a group of
25	persons who shot him, he was facing at right angles because	25	miners that were taken behind the rocks that were lying
	Page 30611		Page 30613
1	the bullet entered the right side of his body, or pelvis in	1	there, maybe which could be that he was amongst those, I'm
2	one case, head in the other, and went out through the back	2	not sure but that could be a probability. Then I proceeded
3	of the left side of his head, the left of his pelvis. So	3	right around until I went in through the first entry into
4	he was at right angles to the person or persons who shot	4	that koppie 3.
5	him, and he was likely to be immediately incapable of	5	CHAIRPERSON: As you did this clockwise
6	movement according to the medical expert. So he wouldn't	6	circuit, as you described it, did you hear any gunshots?
7	have been able to move after he was shot, he died very	7	COLONEL MODIBA: There was no gunshot at
8	quickly and was not able to move before he died. He would	8	the time I was in the koppie.
9	have been, according to our GPS calculations, more than 35	9	CHAIRPERSON: No gunshot, in other words
10	metres away from the shooters, or from the cartridges that	10	while you were doing the circuit or whatever.
11	were found - was it B - the closest cartridges that were	11	COLONEL MODIBA: I didn't hear any
12	found to him, B9 to 20 and it seems clear from this	12	gunshot.
13	evidence that he couldn't have been part of a group that	13 14	CHAIRPERSON: So that means that Mr
14	was charging your line in the circumstances that you describe, he must have been killed in other circumstances	14 15	Thelejane must have been shot before you did your circuit – COLONEL MODIBA: It did –
15 16	and I want to raise something that I understood from your	15 16	COLONEL MODIBA: It did – CHAIRPERSON: - because I mean if you
17	evidence in this regard because - correct me if I'm wrong,	10	walked past there and you came round again and there were
18	because I may have misunderstood you, but I understood your	18	no gunshots during the course of that circuit, then he must
19	evidence to be that - and can we have MMM2 up? MMM2. You	10	have been shot before that. So it sounds from what you
20	spoke about your movement. How you moved. After the	20	say, as if he must have been shot before you passed where
20	charge you moved into the koppie, you turned right, General	20	the body was ultimately found. Would you agree with that?
	sharge you moved into the toppic, you turned right, benefal		
- 173	Naidoo went over to the left, you went right. You say you	22	
22	Naidoo went over to the left, you went right. You say you waited at F2 for some shooting to stop and then you went	22 23	COLONEL MODIBA: It is possible, Chair. CHAIRPERSON: No, never mind possible.
- 173	waited at F2 for some shooting to stop and then you went	22 23 24	CHAIRPERSON: No, never mind possible. I
22 23	h h h	23	CHAIRPERSON: No, never mind possible. I mean that sounds, that's the ineluctable conclusion to
22 23 24 25	waited at F2 for some shooting to stop and then you went out and around through E1 all the way back to J1 and then	23 24	CHAIRPERSON: No, never mind possible. I

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1	Page 30614 COLONEL MODIBA: Yes, Chairperson.	1	Page 30616 COMMISSIONER HEMRAJ: You and the other
2	CHAIRPERSON: Alright. Now, so the only		members in the basic line continued to shoot as some of
		2	
3	question is why didn't you see it? Now, is your answer – I	3	those who were charging towards you turned around and ran
4	just want to make sure I understand you – is your answer	4	back?
5	there were a number of bodies lying there, you	5	COLONEL MODIBA: Chairperson, at – the
6	understanding them to be living people who had been ordered	6	shooting stopped immediately when they surrendered back
7	to lie down and you didn't see a dead body among them? Is	7	into the bush. There was no further shooting there.
8	that effectively what you're saying?	8	COMMISSIONER HEMRAJ: Yes, but all of
9	COLONEL MODIBA: Yes, that's correct,	9	them couldn't have turned around at the same time.
10	Chairperson.	10	COLONEL MODIBA: Yes.
11	MR CHASKALSON SC: But whenever Mr	11	COMMISSIONER HEMRAJ: The question is,
12	Thelejane was killed, if he died where he fell, which is	12	while some of them turned around, did shooting continue?
13	essentially what the expert medical evidence says, he	13	-
14	couldn't have been part of the group that charged your	14	continuation of shooting there.
15	members because they would have been in H3 or in the region	15	CHAIRPERSON: Let me put it this way, how
16	of H3 or I3 when people either shot at them or fired	16	long did the shooting last, for how long? It wasn't just
17	warning shots close to them. Someone who was not able to	17	one second, was it? It must have been longer than that.
18	move could not end up in F or G2 if they were shot while	18	How long did it last?
19	charging in H3.	19	COLONEL MODIBA: It didn't take long –
20	COLONEL MODIBA: Chairperson, it is	20	CHAIRPERSON: Approximately just –
21	possible that at the time of the charging Mr Thelejane	21	obviously you can't tell us with mathematical precision but
22	could have been amongst the group and he could have turned,	22	can you give us an idea of just how long it lasted
23	not turning the whole body but the upper body. He could	23	approximately?
24	have – it's possible that when, with the ricochet of the	24	COLONEL MODIBA: Chairperson, I want to
25	bullets those bullets could have caught him also.	25	point out to say the shooting had not occurred the same
20		25	point out to say the shooting had not occurred the same
	Page 30615		Page 30617
1	Page 30615 MR CHASKALSON SC: But Colonel, there are	1	Page 30617 time while we were being charged towards the kopple 3. It
	MR CHASKALSON SC: But Colonel, there are	1	time while we were being charged towards the koppie 3. It
2	MR CHASKALSON SC: But Colonel, there are two aspects to the medical evidence. The first is the	2	time while we were being charged towards the koppie 3. It was at a different distance as we were moving in, so it
2 3	MR CHASKALSON SC: But Colonel, there are two aspects to the medical evidence. The first is the direction in which Mr Thelejane was facing when he was shot	2 3	time while we were being charged towards the koppie 3. It was at a different distance as we were moving in, so it wasn't at a go that the shooting occurred, so that maybe
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Page 30618 1 hiding behind rocks, behind bushes and so on? It may have 2 been more than just the 15 or 20 who you saw charging. 3 That must be right, surely? 4 COLONEL MODIBA: That's correct. There 5 were a lot of them that were retrieved behind the rocks. 6 CHAIRPERSON: Yes, I see, thank you. 7 MR CHASKALSON SC: Chairperson, I see 8 we've run past four. I am about to move on to my other 9 topic. 10 CHAIRPERSON: May I suggest that you do 11 so tomorrow? We'll adjourn till nine tomorrow. 12 [COMMISSION ADJOURNED] 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .	

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